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ABSTRACT

This transcript from hearings before the House Committee on Government Operations focuses on civil rights enforcement at State colleges and universities by the Department of Education. The questions and testimony centered around the following questions: (1) why had the department delayed enforcement in cases where violations of civil rights were found; (2) why had the department circumvented the Adams order, which outlines enforcement guidelines; (3) why were some cases referred to the Department of Justice, which took no action; (4) why is the Department's Office of Civil Rights (OCR) now using good faith criteria to measure desegregation efforts rather than actual accomplishments; and (5) why has the OCR taken no action in 10 states whose court-ordered desegregation plans expired a year ago. Statements and testimony alleging the unlawful actions of the department were given by witnesses representing organizations such as the National Association for the Advancement of Colored People and the National Women's Law Center. Many of the inquiries and statements reveal a coverup effort in which the dates were changed on complaints and investigations to make it appear that the OCR was fulfilling its mandates. Representatives from the Department testified that although some of the allegations were true, each case had a plausible explanation and was a minor break from policy or practice. They stated that there was no systemic effort to circumvent the law or the duties of the OCR. (VM)

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CIVIL RIGHTS ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

APRIL 23, 1987

Printed for the use of the Committee on Government Operations

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CIVIL RIGHTS ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

THURSDAY, APRIL 23, 1987

House of Representatives,
Human Resources and
Intergovernmental Relations Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2154, Rayburn House Office Building, Hon. Ted Weiss (chairman of the subcommittee) presiding.

Present: Representatives Ted Weiss, Thomas C. Sawyer, John Conyers, Jr., Jim Lightfoot, Ernest L. Konnyu, and James M. Inhofe.

Also present: James R. Gottlieb, staff director; Marc Smolonsky, professional staff member; Pamela H. Welch, clerk; and Mary Kazmerzak, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN WEISS

Mr. Weiss. Good morning. The Subcommittee on Human Resources and Intergovernmental Relations is now in session.

Today the subcommittee continues its ongoing oversight of civil rights enforcement by the Department of Education.

In 1985, the subcommittee conducted 2 days of hearings on the Department's Office for Civil Rights. Following the hearings, the Committee on Government Operations approved a report which concluded that the OCR had delayed enforcement in cases where violations of civil rights laws were found.

The committee's report contained two additional findings relevant to today's proceedings. The committee found that OCR had circumvented the *Adams* order, a Federal court order requiring the agency to adhere to certain enforcement guidelines, and that OCR had avoided enforcement by referring cases to the Department of Justice, which took no action in the cases.

The committee also found that in the past, OCR had evaluated desegregation efforts by State colleges and universities on the basis of actual accomplishments. Instead, OCR now measures desegregation efforts based solely on a so-called good faith standard. As a result, OCR has ignored violations of civil rights laws in States where discrimination continues to exist.

The subcommittee's staff review has found that OCR's regional office staff across the country backdated documents to make them appear in compliance with the landmark *Adams* order and submitted false information to a Federal court. We hope to learn how long these illegal acts went on and how much OCR officials in Washington knew of them.

We also intend to learn today why OCR has taken no final action in 10 States whose court-ordered desegregation plans expired a year ago. Under Federal law, the agency is responsible for evaluating the progress those States have made in eliminating the remnants of illegally segregated higher education systems.

OCR's own internal documents indicate that although the States have made great strides in eliminating the discrimination, the minority students in those States still suffer from the aftermath of our Nation's sorry history of illegal segregation.

Today the subcommittee will hear from the Acting Assistant Secretary for Civil Rights at the Department of Education, an OCR employee with knowledge of the backdating scandal, and representatives of minority students in South Carolina and Virginia.

Our first witness will be Julius Chambers, the distinguished director of the NAACP Legal Defense Fund. He will be accompanied by Elliott Lichtman, counsel for the plaintiffs in the *Adams* case, and Marcia Greenberger, managing attorney of the National Women's Law Center.

Before we commence with our witnesses, let me ask our distinguished ranking minority member, Mr. Lightfoot, for his opening comments.

Mr. LIGHTFOOT. Thank you, Mr. Chairman. I appreciate your holding this hearing today to examine the Office for Civil Rights within the Department of Education.

This subcommittee has an important responsibility in seeing that our Nation's laws are carried out. In this regard, assuring adequate enforcement of our civil rights laws is not a job to be taken lightly. We must make sure that students are not denied an education or receive an inferior education because of discriminatory practices.

The Office for Civil Rights within the Department of Education has been given the responsibility to investigate the complaints of discrimination and to conduct compliance reviews to make sure discrimination is not occurring in educational institutions.

Admittedly, the OCR has not had a good track record in the past in seeking compliance with the law. Congress and the courts have kept a watchful eye on OCR's activities and have imposed requirements on OCR in an attempt to improve its enforcement of the law.

In some cases, these requirements have placed many additional burdens on OCR, but improvements have been made by OCR. For example, the average age of pending complaints has been reduced from 587 days at the end of fiscal year 1982 to 174 days at the end of fiscal year 1986—a decline of 70 percent.

Furthermore, there was a 13-percent decrease in the number of complaints pending at the end of fiscal year 1986 compared to the number pending at the end of fiscal year 1985.

Although OCR has made some strides toward improving civil rights enforcement, it still is faced with many difficult challenges. This hearing will highlight some of these challenges, and I anticipate we will have a thorough discussion of them by our witnesses.

Mr. Weiss. Thank you very much, Mr. Lightfoot. We are also joined by our distinguished colleague, Mr. Inhofe.

Mr. Inhofe. Thank you, Mr. Chairman. Oklahoma is one of the 10 States that has been highlighted as perhaps not complying, and I appreciate the opportunity not only to make some comments, but also to submit the testimony on behalf of Dr. Smith Holt, secretary of education for the State of Oklahoma. In his previous position, Dr. Holt was a faculty member of Oklahoma State University serving as the dean of the College of Arts and Sciences.

Mr. Weiss. Without objection, that statement will be entered in the record.

[The prepared statement of Dr. Holt follows:]

TESTIMONY OF

DR. SMITH HOLT
OKLAHOMA SECRETARY OF EDUCATION

TO THE
SUBCOMMITTEE ON HUMAN RESOURCES
AND GOVERNMENTAL RELATIONS
2154 RAYBURN HOB
APRIL 23, 1987

TO BE SUBMITTED BY REP. JAMES M. INHOFE

TESTIMONY

Dr. Smith Holt

The Higher Regents for the State of Oklahoma have made a good faith effort to increase the participation of blacks in the higher educational system in the State of Oklahoma. Specific examples of these efforts include scholarships for black students and incentives for increasing the number of black faculty of the system's campuses. Moreover, the regents' commitment to increasing the participation of blacks in the higher education system has been articulated in the press and through written directives to the institutions involved.

Despite this, several concerns remain. Though there have been attempts to integrate the main campus at Langston University, this has not been effective. Only through the inclusion of the student bodies at both the Tulsa and Oklahoma City Urban Centers has it been possible to claim any significant integration. Without including the enrollment at Tulsa and Oklahoma City, the Langston campus remains basically un-integrated. This is an issue that will need continued attention.

More importantly, however, the root cause of the lack of participation of blacks in higher education in Oklahoma is just now being recognized--an inadequate pool of appropriately motivated and prepared high school graduates. Without increasing awareness of black students of the importance of attending college and without working with the public school systems to prepare these students to succeed once they have entered college, there will be no way to increase the pool of high school graduates available and qualified to benefit from Oklahoma's higher education system. Activities have been undertaken which provide greater cooperation between Oklahoma's higher education institution and the public schools with an eye toward improving the preparation and hence the access of minority students to Oklahoma's colleges and universities.

Mr. **Inhofe**. Dr. Holt's statement articulates a series of plans and actions that have been undertaken by the board of regents to desegregate student enrollment at higher education institutions. The comprehensive desegregation plan includes the following actions—the State has accomplished a coordinated system to recruit minorities for graduate and undergraduate degrees by way of a doctoral dual study and grant program, the doctoral scholars program, the professional degree assistance program, and the complementary professional study grant program. In order to recruit more black undergraduates, the institution has employed a variety of measures, including scholarships and incentives for black students; increasing the number of minority faculty at all campuses; utilization of the State's high school student list and employment of minority recruiters; development of an alternative admissions program; conducting targeted business to high schools with large minority populations; use of black students and alumni as recruiters; and conducting special counseling sessions.

During the last few years, much progress has been made in Oklahoma. It is my view that it would be inappropriate for the committee to determine whether a State is in compliance with title VI of the Civil Rights Act of 1964 based solely on numbers of percent of population. For example, if you were to compare the numbers of black students currently attending Oklahoma's State system of higher education, you would find that it has a greater percentage than the State of New York. In 1985, 6.4 percent of students enrolled in the Oklahoma higher education system were black, while only 8.8 percent of Oklahoma's 12th grade students were black. In comparison, 6.3 percent of the students enrolled in New York's higher education system were black, while more than 12.4 percent of New York's 12th grade students were black.

Based on this data, I would urge the Department of Education to carefully evaluate all of the pending desegregation plans without judging on the numbers only.

Thank you, Mr. Chairman.

Mr. **Weiss**. Thank you very much, Mr. Inhofe. The practice of the subcommittee is to swear in all of our witnesses. Would you all stand, and please raise your right hand.

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Let the record indicate that all the witnesses answered in the affirmative. We have your prepared statements and they will be entered into the record in their entirety.

Mr. Chambers, please try to keep your oral statement to about 10 minutes, so we will have more time for questions.

Please proceed.

STATEMENT OF JULIUS CHAMBERS, DIRECTOR/COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Mr. **Chambers**. Thank you, Mr. Chairman and members of the subcommittee, on behalf of the NAACP Legal Defense Fund, I appreciate the opportunity to testify——

Mr. **Weiss**. The microphones are not as sensitive as they ought to be. Would you bring the mike closer to you, please?

Mr. **Chambers**. Sure.

Mr. **Weiss**. Thank you.

Mr. **Chambers**. In 1970, the NAACP Legal Defense and Educational Fund filed a complaint on behalf of black citizens of southern and border States against the Secretary of the Department of Health, Education, and Welfare.

The complaint sought to force the HEW to abide by the statutory responsibilities under title VI of the 1964 Civil Rights Act, which prohibits discrimination in federally funded programs.

At the time the suit was filed, the Legal Defense Fund was engaged in a herculean attempt to desegregate secondary school districts throughout the South. These school districts which had ignored or evaded the mandate in *Brown* v. *Board of Education* for 16 years, received Federal funds which brought them within the purview of title VI. During that decade most of the elementary and secondary schools in the South which had been de jure segregated were integrated, and while the elementary and secondary schools component of *Adams* was continued, much of it was concerned with the discrimination on the basis other than race, for example, handicap and gender.

While much has been accomplished as a result of *Adams* and other decisions in the area of elementary and secondary school desegregation, in the 17 years since that lawsuit was filed, the higher education component of *Adams* has been a series of disappointments and evasions similar to those experienced in the efforts to desegregate elementary and secondary schools between 1954 and 1971.

While there has been some isolated successes, they are too few and far between to allow us to claim victory. Thirty-three years after *Brown*, the vestiges of de jure dual system of higher education persist. In some ways, it is ironic that higher education has been the last bastion of lingering segregation in America's public schools. *Brown* and all the resulting elementary and secondary school desegregation was paved with victories in the context of higher education—*Sweatt* v. *Painter* and *McLaurin* v. *Oklahoma State Regents*. One might think that having had more initial success in the higher education arena, the job of dismantling the dual systems of higher education would be more easily accomplished.

Certainly when the Legal Defense Fund filed the *Adams* case, our lawyers thought that the principles of *Brown* were equally applicable to public colleges and universities. From a strictly constitutional standpoint, how can one justify the perpetuation of public colleges and universities which were established as racially segregated institutions and which continue to exist as racially identifiable institutions with gross financial, programmatic, and physical disparities? Yet, one must readily admit that the remedies for elementary and secondary segregation are not universally applicable to higher education. Postsecondary education is not compulsive.

Moreover, students not only decide whether to attend a college, they decide which college to attend. These and other factors necessitate different approaches to higher education desegregation.

Nonetheless, these factors of the de jure segregated system of higher education were established and maintained in such a way as to constrict choice. Once these systems were established, they became imbedded in custom and tradition. The confluence of law, custom, and tradition has operated to preserve racial segregation in public higher education in the former de jure States. Our preliminary analysis shows that while there has been some significant progress and success stories, the *Adams* States are not yet in compliance with the plans to which they committed themselves almost a decade ago. Typically in the *Adams* States, black students enroll in college in significantly fewer numbers and percentages than their white counterparts. Their representation is significantly lower than their percentage of the general population. Even for those pursuing undergraduate studies, a larger percentage of black students are enrolled in 2-year as opposed to 4-year institutions. They drop out in higher numbers compared to white students.

Of those black students who graduate, an even smaller proportion enroll in graduate and professional schools. Public colleges and universities which formerly excluded black students by law remain virtually all white. Often a significant percentage of the black students enrolled are on athletic scholarships, and many of these students do not graduate.

Black faculty and administrators at most of the traditionally white institutions are virtually nonexistent. Black individuals seeking employment in State institutions of higher education must find their opportunities in traditionally black institutions. Institutions which were established by the State for blacks remain predominantly black and underfunded, with inferior academic programs and facilities—in other words, separate and unequal.

We can no longer deny that these conditions are the unameliorated effects of discriminatory State action than we can continue to allow the conditions to remain unremedied. Yet, in spite of three cycles of plans submitted to the Office for Civil Rights as the result of the *Adams* litigation, opportunities in higher education for black citizens in the covered States have not increased to a point sufficient to overcome the crippling legacy of racial discrimination.

I was noticing the red light, assuming that is 10 minutes. I am not sure how——

Mr. WEISS. I think that does indicate the 10 minutes have expired. If you would like, you can conclude as expeditiously as you can.

Mr. CHAMBERS. I would conclude by making two points. The first is that as we proceed with efforts to eliminate the vestiges of discrimination in higher education, we should keep in mind that the focus for desegregation of higher education should not be centered exclusively on the traditionally black institutions, as has been attempted in several States. We should focus primarily on the traditionally white institutions and ensure that opportunities are available for black students in all schools, and not use the traditionally black institutions as the basis for eliminating the vestiges of discrimination.

And the second point is that we have watched OCR over the past year fail as will be described in more detail in a minute to carry out its responsibility under court orders to ensure that equal opportunities are available to black students in higher education.

As this has occurred, we have watched as a decreasing number of black students have enrolled in undergraduate, graduate, and professional schools in America today.

We have in higher education in the black community a crisis, and one that cries out for some relief, relief that I think can be ensured through proper enforcement of title VI by the Department of Education. I hope that through proceedings like this, we can encourage the Department of Education and the Office for Civil Rights to discharge its responsibilities under established law.

Mr. WEISS. Thank you, Mr. Chambers.

[The prepared statement of Mr. Chambers follows:]

TESTIMONY OF JULIUS L. CHAMBERS, DIRECTOR-COUNSEL
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
BEFORE THE
HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS
SUBCOMMITTEE OF THE HOUSE COMMITTEE ON
GOVERNMENT OPERATIONS
ON APRIL 23, 1987

TESTIMONY OF JULIUS L. CHAMBERS, DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. BEFORE THE HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS ON APRIL 23, 1987

Chairman Weiss and Members of the Subcommittee:

In 1970, the NAACP Legal Defense and Educational Fund filed a complaint on behalf of black citizens of southern and border states against the Secretary of the Department of Health, Education and Welfare. The complaint sought to force HEW to abide by its statutory responsibilities under Title VI of the 1964 Civil Rights Act, which prohibited discrimination in federally funded programs.

At the time the suit was filed, the Legal Defense Fund was engaged in a Herculean attempt to desegregate elementary and secondary school districts throughout the South. These school districts, which had ignored or evaded the mandate of _Brown v. Board of Education_ for sixteen years, received federal funds which brought them within the purview of Title VI. In the ensuing decade, most of the elementary and secondary schools in the South which had been _de jure_ segregated were integrated, and while the elementary and secondary schools component of _Adams_ was continued, much of it was concerned with discrimination on bases other than race, _e.g._, handicap and gender. While much has been accomplished as a result of _Adams_ and other litigation in the area of elementary and secondary school desegregation, in the seventeen years since this lawsuit was filed the higher education component of Adams has been a series of disappointments and evasions similar to those experienced in the efforts to desegregate elementary and secondary schools between 1954 and 1971. While there have been some isolated successes, they are too few and far between to allow us to claim victory. Thirty-three years after Brown, the vestiges of de jure dual systems of higher education persist.

In some ways it is ironic that higher education has been the last bastion of lingering "Jim Crow" in America's public schools. The road to Brown and the resulting elementary and secondary school desegregation was paved with victories in the context of higher education: Sweatt v. Painter, 339 U.S. 629 (1950), and McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950). One might think that having had more initial success in the higher education arena, the job of dismantling dual systems of higher education would be more easily accomplished. Certainly when the Legal Defense Fund filed the Adams case, our lawyers thought that the principles of Brown and its progeny were equally applicable to public colleges and universities. From a strictly constitutional standpoint, how can one justify the perpetuation of public colleges and universities which were established as racially segregated institutions and which continue to exist as racially identifiable institutions with gross financial, programmatic and physical disparities?

Yet, one must readily admit that the remedies for elementary and secondary segregation are not universally applicable to higher education. Post secondary education is not compulsive. Moreover, students not only decide whether to attend college, they decide which college to attend. These and other factors necessitate different approaches to higher education desegregation. Nonetheless, these factors are not new; the *de jure* segregated public systems of higher education were established and maintained in such a way as to constrict choice. Once those systems were established, they became embedded in custom and tradition. The confluence of law, custom and tradition has operated to preserve racial segregation in public higher education in former *de jure* states.

Our preliminary analysis shows that while there has been some significant progress and success stories, the *Adams* states are not yet in compliance with the plans to which they committed themselves almost a decade ago. Typically, in the *Adams* states, black students enroll in college in significantly fewer numbers and percentages than their white counterparts. Their representation is significantly lower than their percentage of the general population. Even for those pursuing undergraduate studies, a larger percentage of black students are enrolled in two year as opposed to four year institutions. They drop out in higher numbers compared to white students. Of those black students who graduate, an even smaller proportion enroll in graduate and professional schools.

Public colleges and universities which formerly excluded black students by law remain virtually all-white. Often a significant percentage of the black students enrolled are on athletic scholarships and many of these students do not graduate. Black faculty and administrators at most of the traditionally white institutions are virtually nonexistent. Black individuals seeking employment in state institutions of higher education must find their opportunities in traditionally black institutions. Institutions which were established by the state for blacks remain predominantly black and underfunded, with inferior academic programs and facilities -- in other words, separate and unequal.

We can no more deny that these conditions are the unameliorated effects of discriminatory state action than we can continue to allow the conditions to remain unremedied.

Yet, in spite of three cycles of plans submitted to the Office of Civil Rights as a result of the Adams litigation, opportunities in higher education for black citizens in the covered states have not increased to a point sufficient to overcome the crippling legacy of racial discrimination. In fact, statistics reveal that in some states conditions are getting worse as opportunities for black students and administrators are decreasing. Although our analysis is not yet complete, we believe that there has been a significant failure on the part of the "first-tier" Adams states to implement faithfully some of the desegregative measures to which they committed themselves. Moreover, we believe that these shortcomings may not be documented adequately or remedied by the Department of Education's Office of Civil Rights as a result of OCR's current philosophical approach to the case which apparently eschews statistical evaluations, ignores actual results and merely determines whether measures have been implemented in good faith.

We believe that such an approach is not only ineffective, it is in conflict with the relevant caselaw applicable to desegregation cases. Fourteen years after Brown the Supreme Court, in Green v. New Kent County Board of Education, 391 U.S. 430 (1968), made it clear that Brown charged formerly de jure school boards "with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." In 1979, the Supreme Court ruled in Dayton Board of Education v. Brinkman, 443 U.S. 526, 538 (1979) that "the measure of the post-Brown I conduct of a school board under an unsatisfied duty to liquidate a dual school system is the effectiveness, not the purpose of its actions in decreasing or increasing the segregation caused by the dual system." The courts have also made clear that the mere implementation of a desegregation plan does not cure a violation; the plan must work effectively to eliminate the vestiges of segregation.

Although the remedies in elementary and secondary school desegregation cases may differ, these principles apply with equal force in the area of post-secondary desegregation. In a recent higher education desegregation decision involving the State of

Tennessee, in which the Justice Department sought to invalidate desegregative affirmative action provisions, the U. S. Court of Appeals for the Sixth Circuit reiterated that it previously had "rejected the argument that Green applies only to elementary and secondary education" and noted that "'the state's duty is as exacting to eliminate the vestiges of state-imposed segregation in higher education as in elementary and secondary school systems; it is only the means of eliminating segregation which differ.'" Geier v. Alexander, 801 F.2d 799 (6th Cir. 1986), citing Geier v. University of Tennessee, 597 F.2d 1056 (1979), and quoting Norris v. State Council of Higher Education, 327 F. Supp. 1368, 1373 (E.D. Va. 1971), aff'd per curiam sub nom. Board of Visitors of College of William & Mary in Virginia v. Norris, 404 U.S. 907 (1971). The mere passage of time does not cure the violation because, as the Supreme Court ruled in Columbus Board of Education v. Penick, 443 U.S. 449, 459 (1979), "[e]ach instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment."

Although the Justice Department in recent years has expended considerable amounts of energy attempting to change the law in school desegregation cases, it has not succeeded. The law in 1987 in school desegregation cases is what it was in 1979 when the Supreme Court decided its last desegregation cases, Dayton v. Brinkman and Columbus v. Penick.

Title VI of the Civil Rights Act of 1964 was enacted under the enabling clause of the Constitution's Fourteenth Amendment.

The affirmative duty charged to formerly de jure school systems is to remedy a condition which violates the Title VI prohibition of federal entanglement with racially discriminatory recipients of federal financial support. The Department of Education is obligated to ensure that states once operating de jure segregated systems of higher education eliminate the vestiges of discrimination or must initiate enforcement proceedings against states which fail to meet their affirmative obligations. Over the last seventeen years, the Legal Defense Fund has expended a significant amount of time, energy and resources attempting to force the Education Department and its predecessor, HEW, to meet its statutory obligations. The Department of Education, through OCR, has responded reluctantly at best, and has engaged in a pattern of foot-dragging, defiance and apparently deception. Moreover, the federal government has now taken the position that its own goals and timetables for bringing the Adams states into compliance, to which it committed itself in 1978, impose onerous burdens and are impossible to meet. The federal government now challenges the right of individual black citizens to bring a legal action to ensure that the Department of Education abides by Title VI and eliminate racially discriminatory and segregated systems of higher education.

Meanwhile, the conditions of black Americans in public higher education is not improving, it is worsening. An article appearing in the April 19, 1987, New York Times reported that enrollment of minorities in colleges nationwide is stagnating.

According to the American Council on Education, black enrollment reached its peak in 1976 when 1,032,000 blacks made up 9.4 percent of the college population. In 1984, 1,070,000 black students were 8.8 percent of the college population. This trend is developing even as the black and other minority population as a percentage of the total national population grows, and that trend is reflected despite an increasing percentage of minority students overall in public schools. We are faced with the spectre of a nation in which an increasing number and percentage of the workforce is black and minority but educationally ill-prepared to function at their fullest potential. While this disturbing trend is not endemic to the South, certainly the failure of the Adams states to discharge their affirmative duties can only exacerbate the trend.

In the course of the Adams litigation certain principles have emerged. The focal point of desegregative efforts cannot and must not be limited to the traditionally black institutions. They cannot be forced to bear the burden of desegregation either through closures or the implementation of other requirements. The *de jure* system was not established by blacks to exclude whites from black schools. It was established by whites to exclude blacks from white schools. In the process of desegregation the traditionally white schools must continue to be a focal point of the inquiry as to whether black students and educators are afforded equal opportunity and nondiscriminatory treatment. Although the continued existence of state-created racially identifiable institutions, black or white, requires remedial action, black citizens and traditionally black institutions should not be victimized in the process of desegregation. For example, if desegregation requirements were strictly imposed on traditionally black institutions before the traditionally white institutions have established a track record of black presence in their student populations, faculty and administrative staff, there would be a net loss of educational and employment opportunities for blacks. Similarly, if the traditionally black institutions are not physically and programmatically enhanced and given jurisdiction over high demand academic programs, they cannot compete favorably among the total student applicant pool. In short, the Adams states must commit themselves to a desegregation process which enhances opportunities for black students, faculty and employees as well as the programs and facilities of traditionally black institutions.

Seventeen years after the Adams case was filed, OCR can no longer continue to put off the day of reckoning for the Adams states. It is not sufficient to renew plans or extend deadlines every few years. On behalf of the Legal Defense Fund, it is my hope that this committee will use its oversight authority to press OCR to evaluate compliance with the 1978 plans in a manner which reflects integrity and which is faithful to OCR's Title VI obligations. As a matter of law, these states are obligated to remedy their longstanding segregative acts and OCR should be compelled to insure that federal funds do not support discriminatory institutions or systems of higher education. As a matter of public policy, the failure to deal decisively with this long-standing problem will haunt us for generations to come. We must move forward to finally put an end to a sad chapter in our nation's history.

Mr. WEISS. Mr. Lichtman.

STATEMENT OF ELLIOTT C. LICHTMAN, ESQ., LAW FIRM OF LICHTMAN, TRISTER & LEVY

Mr. LICHTMAN. Chairman Weiss and members of the subcommittee, as I have submitted a prepared statement for the record, at this time, I will just briefly attempt to summarize the highlights of that statement.

There is probably no more dramatic illustration of the need for close congressional oversight and continuing judicial intervention than OCR's admitted backdating of documents reflecting when officials carried out certain compliance and enforcement steps.

It is really astounding that the Office for Civil Rights has reported to the court that officials in a majority of the regions across the country have been falsifying dates on which letters of findings have issued or on which letters of acknowledgment have issued.

It is all the more shocking that the practice is so pervasive. The inspector general has investigated the practice in region I in Boston. He looked at 35 cases. He found that the backdating occurred in 23 of 35 cases.

OCR itself has looked at the other regions and found, for example, in region IV, that in 32 cases checked, this happened in 14 of those cases. In region VI, 18 out of 26 checked. Region VII, 17 out of 36 checked.

The backdating is extremely serious for two reasons. First of all, the timeframes are part of a court order, and the backdating results in misreporting to the plaintiffs and in effect to the court whether OCR is complying, and therefore, in turn, the backdating covers up noncompliance in fact.

Equally important, the second consideration is that the timeframes are an essential remedy going to the very heart of the 17-year-old OCR case. The problem has always been OCR delays, delays in finding discrimination, delays in acting upon those findings, with the consequence that valuable rights under title VI, rights of the victims of discrimination, are lost.

Over and over since the early 1970's, the plaintiffs have had to return to the Federal court for additional relief against OCR delays, and since at least 1975, the district court has concluded that some type of time rules are needed as an effective remedy against delays, and that judicial remedy is, of course, wholly undermined if OCR officials lie about the actual dates on which enforcement steps are taken, and that is why we urge the Congress to review very closely what OCR has done to discipline the offenders and to ensure that this practice not reoccur.

On the subject of higher education desegregation, here too we have protracted delays in decisionmaking. Currently it is more than a year, more than a year has passed since OCR received the relevant information from the States concerning the 1985–1986 school year—supposedly the last year in the latest cycle of plans, and I notice OCR has come up with a new gimmick to avoid implementing its duties and determine if the States are in compliance with their plans or in compliance with the statute, and the new gimmick, of course, is to send out factual summaries, summaries without conclusions, to the States and to the public inviting comment over a 60-day period. This will surely delay things all the more and, secondly, what purpose is there in this tactic except to invite States to provide OCR with self-serving rationalizations of why they have failed so badly in reaching the goals and why they have so often not implemented the measures to which they solemnly committed themselves?

We have here in 1987 a repetition of what has plagued OCR for almost two decades, either refusals to decide at all, or where there are findings of discrimination, a refusal to carry out the enforcement steps mandated by the statute.

We have been doing our own preliminary analysis of the States covered by the deadlines of the most recent *Adams* order in March 1983. That order called for a windup of these plans at the 1985-1986 school year, and a final determination of whether the States have eliminated the vestiges of discrimination by the 1985–1986 school year, and in my prepared testimony, we have carefully analyzed one State, the State of Georgia, as an example. We have detailed there in our narrative, in our attached tables, the extent of Georgia's default, and I won't repeat now what I said there, but I would point the committee's attention specifically, for example, to page 5 of our narrative in which we discuss the many promises that were made with respect to the three traditionally black institutions in Georgia, which promises to enhance the facilities, for example, have not been carried out.

I would point also to the goal of parity in college going rates, that is, that blacks and whites are supposed to be entering the higher ed system in the same proportion relative to their high school graduates, and we find not only lack of progress, we find that the disparity in 1985–1986 is far worse than it was in 1978–1979 when the plan, the latest plan, was commenced.

We would ask the committee to scrutinize closely how OCR will evaluate the States at the completion of this process. For example, will OCR judge the States in compliance just on the basis of their efforts, just on the basis of their so-called measures, regardless of result, that is, regardless of whether or not desegregation has occurred?

Mr. Singleton, when he was here last time last year, seemed to signal that that would be the course OCR would be taking.

What will OCR require the States to do to eliminate the vestiges of discrimination which generally remain in these States after all of these years, after three cycles of plans, each of which involved the formulation of the plan, the approval of the plan by OCR, the attempted implementation by the State, the findings that the State had not met its commitments? We have done that three times over the last 13 years. After these three cycles, it would be a tragedy for OCR now to find the States in compliance even though the vestiges remain.

We urge the committee, therefore, to ensure that OCR not permit that result to occur.

Mr. Weiss. Thank you, Mr. Lichtman.

[The prepared statement of Mr. Lichtman follows:]

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TESTIMONY OF ELLIOTT C. LICHTMAN BEFORE THE HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS ON APRIL 23, 1987

Chairman Weiss and Members of the Subcommittee:

We appreciate the request that I provide testimony concerning the case of Adams v. Bennett as it applies to higher education desegregation. You have also requested our reaction to the admitted backdating of documents by Department of Education employees in their effort to cover up noncompliance with the Adams Order, a subject to which I will turn later in my testimony. For the record, my law firm along with the NAACP Legal Defense Fund represents the plaintiffs in the Adams case.

A. Inaction and Default in Higher Education

The current inaction and unwillingness of the Office for Civil Rights of the Department of Education to enforce Title VI of the Civil Rights Act of 1964 with respect to higher education is characteristic of the agency's meager efforts to implement the statute over many years. More specifically, Adams v. Bennett -- then Adams v. Richardson -- was originally brought in 1970 because OCR:

(1) had refused to decide compliance issues or had delayed those decisions for protracted periods of time with the consequence that "justice delayed [became] justice denied"; and

(2) had refused to commence enforcement proceedings against state systems of higher education despite the clearest evidence of Title VI noncompliance by the states.

Despite 17 years of litigating the Adams case, which has produced numerous judicial decrees, these two fundamental defaults sadly still characterize OCR's current approach to enforcing Title VI in the area of higher education. To understand the context for this dismal conclusion, it is necessary to sketch briefly some of the major events in the history of this important law suit.

1. The Complaint and Initial Rulings. As long ago as 1969 and 1970, OCR sent letters to 10 southern and border states finding that the states had failed to eliminate the vestiges of segregation by law in their higher education systems, which remained racially separate in their student bodies and faculties.

Although each of the OCR letters required the submission of corrective desegregation plans as a condition of continued federal funding, five states simply ignored the agency's directives and five proffered wholly inadequate plans. When OCR failed to act in the face of this defiance by the 10 states, students attending the racially segregated and discriminatory schools and colleges receiving federal funds filed suit in *Adams* in 1970, charging the Secretary of the Department of Health, Education and Welfare and the Director of the Office for Civil Rights with violating their duty under Title VI either to secure corrective action or to commence formal enforcement proceedings. (Several of the causes of action also related to elementary and secondary school districts.)

The United States District Court for the District of Columbia upheld the plaintiffs' complaint. Finding in its initial 1973 Order that the "time permitted by Title VI...to delay the commencement of enforcement proceedings against the ten states for the purpose of securing voluntary compliance has long since passed," the Court directed the commencement of such enforcement proceedings within 120 days (implicitly giving the states four months within which to come into compliance). 356 F.Supp. 92,94. When OCR appealed this order to the United States Court of Appeals for the District of Columbia Circuit, that Court *en banc* unanimously affirmed, extending the deadline for enforcement proceedings to 300 days. 480 F.2d 1159, 1165 (1973).

2. *The First Cycle of Plans*. In response to the Court Order, all but 2 of the 10 states submitted plans in 1974 which OCR promptly rubber-stamped. But when it became clear that the plans were not desegregating the higher education systems, the plaintiffs in *Adams* filed a motion for further relief in United States District Court seeking new and much improved desegregation commitments from the states. In depositions taken thereafter, OCR officials agreed that no real desegregation had been achieved under the 1974 plans, which lacked "standards of clarity and specificity," and conceded "the need to obtain specific commitments necessary for a workable higher education desegregation plan" from each of the states. 430 F. Supp. 118, 120 (1977). In 1977 District Judge Pratt granted the motion for further relief, finding that the plans of the states failed to meet "important desegregation requirements and ... failed to achieve significant progress toward higher education desegregation" *Id*. at 119. The Court directed OCR promptly to notify the states that their existing plans "are not adequate to comply with Title VI of the 1964 Civil Rights Act."*Id*. at 121.

At the hearing prior to its 1977 order, the District Court had stated its intent to put OCR "under the compulsion of a Court order to submit to the states certain specific requirements which the states must respond to." The Order then directed OCR within 90 days to transmit to the states "final guidelines or criteria specifying the ingredients of an acceptable higher education desegregation plan" 430 F. Supp. at 121. Thereafter, the states were required to submit revised plans in conformity with the criteria within 60 days of their receipt, and HEW was directed to accept or reject a new plan within 120 additional days. *Id*.

3. *The Second Cycle of Plans*. The 1977 Order precipitated a series of consultations and negotiations which led to HEW's promulgation of the higher education desegregation Criteria in July of 1977 (later slightly revised in 1978). In the published Criteria HEW expressly recognized that the judicial mandate directed it to prepare guidelines "which would identify for the states the specific elements to be included in their revised desegregation plans." Those elements of the Criteria include bringing black high school graduates into college at the same rate as whites; black student enrollment goals at undergraduate, graduate and professional levels in the formerly all white institutions and in the system as a whole; the strengthening of the formerly all black institutions to make them more attractive to all students; goals to match black faculty and other employees to the level of their availability; increasing the number of black administrative and governance officials throughout the system; and the elimination of unnecessary program duplication between formerly white and formerly black institutions. Having promulgated the Criteria in accordance with the District Court's 1977 order, the Office for Civil Rights then attempted to secure from the states revised plans conforming with them. In 1978 OCR accepted 5-year plans from Arkansas, Oklahoma, Georgia, Virginia, Florida and the North Carolina Community Colleges.

4. *The Third Cycle of Plans*. These plans were due to expire at the end of the 1982-83 academic year. When required reports to the plaintiffs made manifest once again that the states had generally failed to carry out their commitments, the plaintiffs returned to Judge Pratt in 1982 for additional relief. Once again Judge Pratt upheld plaintiffs' motion, finding that each of the states "has defaulted in major respects on its plan commitments and on the desegregation requirements of the Criteria and Title VI." Order dated March 24, 1983, p. 2. The Judge further found that "each state has not achieved the principal objectives in its plan because of the state's failure to implement concrete and specific measures adequate to ensure that the promised desegregation goals would be achieved by the end of the five-year desegregation period." *Id*. Accordingly, Judge Pratt directed the commencement of formal Title VI enforcement proceedings no later than the fall of 1983 unless each state submits by June 30, 1983 "a plan containing concrete and specific measures that reasonably ensure that all the goals of its 1978 desegregation plan will be met no later than the fall of 1985." *Id*. at 3.

Finally, to ensure "substantial progress toward the goals of [the plans] during the 1983-84 academic year", the Judge directed OCR to evaluate the fall 1983 school data no later than April 1, 1984, requiring the commencement of enforcement proceedings by the fall of 1984 if the mandated progress was not achieved. This expedited schedule contrasts sharply with OCR's current protracted schedule for evaluation of the states' performances. As we discuss below, precious little progress occurred in the 1983-84 school year or in any of the years since the Court's March 24, 1983 Order which gave the states approximately three additional years to do the job they had promised in 1978 to complete within five years.

OCR, however, refuses to make this evaluation of whether the states have carried out their goals and commitments under their 1978 plans as extended in 1983. More than one year has now passed since OCR received the fall of 1985 student and faculty data central to this decision. After holding these data and the on-site institutional reports over all of this time, OCR has now decided not to decide. Instead, it has issued "factual summaries" to the states and to the public calling for comments within 60 days, without deciding whether the states have met their plan commitments and whether the states are in compliance with Title VI. These 1987 summaries are primarily drawn from information supplied by the states themselves. What reason can there be for this unprecedented 60-day comment period except to give OCR a mechanism for further delay? Moreover, in addition to giving OCR an excuse for additional delay, the "comment" device will provide each of the states with a wholly unnecessary opportunity to submit self-serving protestations which will attempt to rationalize their continuing failure to carry out their commitments. After three cycles of plans over 13 years--each time entailing formulation, submission and negotiation of the plan, a period for implementation and massive failure to achieve desegregation--it is time for OCR to bite the bullet: find the states out of compliance and commence formal enforcement proceedings against them.

We believe that the states have massively failed to meet their plan commitments. While we have been waiting for OCR to perform its duty under the judicial order and Title VI, we have been conducting our own independent evaluation of the data and the on-site reports for the six states covered by the above-described portions of the March 24, 1973 Order. Although our conclusions are only preliminary at this juncture, we believe our final analysis will demonstrate that each of the states has once again sharply defaulted on most of its plan commitments. OCR apparently agrees, for its factual summaries for each of the states are remarkable in their general failure even to address whether the states have met their goals and commitments under the plans. Instead, the focus of the summaries is primarily on the extent to which the states have carried out certain measures to achieve those goals, *regardless of whether the measures have achieved any desegregation.*

In our preliminary analysis, we have looked particularly closely at one state, Georgia, which we now discuss as an example. That review shows dramatically the state's major default on the 1978 plan goals to which the state solemnly committed itself. Our review proceeds in the order of Georgia's Plan (which generally tracks the Criteria).

B. *Default by Georgia*

1. *Enhancement of Georgia's Traditionally Black Colleges -- Albany State College (ASC), Fort Valley State College (FVSC), and Savannah State College (SSC)*. Georgia pledged in 1978 to enhance its traditionally black institutions (TBIs) by improving their physical facilities, academic programs and services offered to students and faculty. In 1984 OCR informed Georgia, as it had on several previous occasions, that it had "found significant and recurring problems regarding the efforts to enhance the traditionally black institutions," Letter of Findings (LOF), p. 1. Yet as of the expiration of its Plan, Georgia has still failed to carry out many of the improvements it promised at the TBIs.

For example, the state promised to seek up to $15 million in special construction funding for the three traditionally black schools between 1979 and 1984, and identified specific projects to be completed. As of 1985 only about half the promised funds had materialized. Four buildings were scheduled for renovation: one has received minor improvements but funds are considered unavailable for the complete renovation university officials say is needed; one is funded but still under design; and two have been declared not in need of renovation. Eight new buildings were to be constructed: two are funded and under construction; two were funded in 1985; and four are not even reported to be funded, let alone built, see 1987 Summary, pp. 4-7.

In 1978 the state promised a total of 21 new enhancement programs at the three TBIs. Eventually they, or substitutes, were implemented, but most have fared poorly in both funding and enrollment. Whereas they were to enroll at least 2100 students of all races among them, the last enrollment count amounted to fewer than 1000, of whom only 176 were non-black, 1987 Summary, p. A-3a. The problems are attributed "partly to the lack of funds for recruitment and scholarships," 1987 Summary, p. 8. Moreover, one institution, SSC, proposed abandoning all but one of the enhancement programs that it did implement. In 1985, OCR called this "especially disturbing when the low funding level of certain of the *Plan's* enhancement programs over the years is considered," LOF, p. 2. Since then funding has increased little, if at all, and the programs apparently remain in limbo, see 1987 Summary, pp. 8 & A-3b.

Several additional examples:

- As part of the 1978 Plan, the Agricultural Extension Programs at FVSC and the University of Georgia, a traditionally white institution, were to be combined in one cooperative program as part of the enhancement of FVSC; the two remain almost completely separate, and the best OCR can find to say is that steps have been taken to increase coordination efforts, 1987 Summary, pp. 12-13.

- Georgia promised to enhance ASC's Nursing Program to meet its accreditation requirement of a 75% pass rate, with all steps necessary. The program became fully accredited, but its status is now in jeopardy because of a pass rate of only about 43%, see 1987 Summary, p. 15. OCR gives no indication of the steps, if any, taken to preserve accreditation.

- The state did not implement some promised steps to strengthen "2+2" programs to enhance ASC and permit transfers from a nearby two-year TWI, and in 1985 no faculty from either institution participated in an exchange program that is part of the enhancement plan, see 1987 Summary, pp. 17-19.

2. College-Going Rates. Throughout the period of Georgia's plan, blacks have entered college at only half the rate of whites or worse although parity was the goal. The disparities have grown worse, in recent years, with the black rate sinking to only 38% of the white rate in the most recent year reported, 1985-86. While blacks have become an increasing percentage of high school graduates in Georgia, they have declined as a proportion of overall undergraduate enrollment.

Despite the magnitude of this inequity the state has done little to alter it. Only a few statewide measures were undertaken; one was a brochure to be distributed among blacks whose development was delayed so long that it was late even for the 1985-86 recruiting, OCR Status Report (SR) 1985, p. 30. An academic program inventory was "general in nature and not focused to aid specifically in minority recruitment," SR 1984, p. 39.

Primary responsibility has been relegated to the individual institutions, but their reports are so deficient that in many cases OCR has been unable to determine whether recruitment of blacks has even been attempted, see, e.g., SR 1985, p. 28. The agency now claims expansively that "[e]ach institution implemented plans that included [specified] measures in 1983-84 and continues them each year," 1987 Summary, p. 24, but OCR officials, by their own account, would have no basis for such a statement. Moreover, where information was available, OCR found that some institutions have "significant deficiencies in implementing the plans" and in most, "only some of the measures were attempted," SR 1985, p. 28. Advertisements run pursuant to the plans "made no reference or special appeal to black students," SR 1984, p. 44.

OCR's latest document emphasizes the continuing revision of institutional plans. What it does not mention is that the state did not keep its agreement to submit the revisions to OCR for pre-implementation review, nor that these revisions "generally include[d] fewer activities and contacts," and did not provide details, names of persons responsible, or funding data, SR 1985, p. 29.

3. Black Enrollment at the Four Year TWIs. Georgia committed itself to increase black enrollment at the TWIs substantially. The number and percentage of black students at these institutions has increased since 1978, with particular progress in the last two years. However, the state has still achieved only about 75 percent of its goals. The failures in implementing measures described in section 2 above and 5 below have undoubtedly contributed substantially to the shortfall.

4. Black Graduate and Professional School Enrollment. Post-baccalaureate study appears to be the one area where Georgia has come close to black/white parity. Although black rates of entry to professional schools have fallen short of the goal, the black rate of entry to graduate studies has consistently exceeded the white rate. Overall black enrollment in graduate studies is 80 percent of the state's original goal and in professional schools represents 95 percent of the goal.

In this one area, the state appears to have mounted extra and effective effort. It has identified all minority group students with high grade point averages, supplied the names to graduate schools and sent mailings to the students. All graduate school deans have compiled materials distributed at all the four-year institutions. Almost all of the latter have put "great efforts" into seminars advising and informing minority group students on graduate and professional opportunities. Finally, and significantly, the state has provided half a million dollars a year for scholarships, 85 percent of which go to economically disadvantaged minority group students.

In the professional schools black retention also appears almost at parity with white retention. Nevertheless, there appears to be a significant -- and unaddressed -- retention problem in graduate studies. Whereas blacks have constituted 10 to 12 percent of the entrants, they are only 8 to 9 percent of total enrollment, and a lower percentage of advanced degrees awarded -- 7 to 8 percent of the master's degrees, and 3 to 5 percent of the PhD's. In this area, the state has not kept all its commitments. It had promised to provide disadvantaged students opportunities to improve their skills in order to prepare them better for post-baccalaureate study; however there is still only one program in one school to accomplish this, SR 1984, pp. 41-42. OCR's 1987 summary fails to mention either the commitment or the failure to take implementing measures.

5. Retention of Black Undergraduate Students. The one year retention rate for black undergraduates in the higher education system was no better in 1985-86 than it was in 1978-79 -- about 90 percent of the white retention rate. This annual disparity of about 10 percent cumulates into a much larger inequality over four years, as indicated by the diminution in the proportion of blacks during the undergraduate years. Through the life of Georgia's plan blacks have usually formed about 19 percent of the first year enrollment, 15 percent of total undergraduate enrollment, and only 10 percent of bachelor's degrees awarded.

The state has done little to bring blacks to parity in this regard. Georgia's "key method of counteracting high attrition rates" is supposed to be its Developmental Studies Program (DSP) at each institution, including counseling, study skills instruction, remedial labs and other retention services, SR 1984, p. 53. OCR found, however, that for nine of ten colleges with the highest black attrition rates, the 1983-84 DSP budget declined from the previous year's funding, SR 1984, p. 53. Again, several institutions with high black attrition rates in 1985 were to receive smaller DSP budgets in 1986, compare 1987 Summary, p. A10 with the state's 1985 Annual Progress Report (APR), p. IV-2.

A summer enrichment program that produced better test scores and positive ratings from participants is limited to six institutions, SR 1985, p. 36; 1987 Summary, p. 30. Minority advising programs committed to in the 1983 amendments were to be modified, but changes were not even shown to OCR and at least one institution implemented changes in a manner "that would not be consistent with the State's commitment," SR 1985, pp. 36-37.

Moreover, the state has not kept all its commitments to implement measures to increase mobility between junior and senior institutions, e.g., SR 1985, pp. 32-33, and some institutions have actually interfered with implementation, e.g., 1987 Summary, p. 26.

Finally, according to the state itself, black students are much more likely to come from low income families, and "financial concerns: are "the major reason that UGA students leave school," "External Factors Which Constrain Achievement of Desegregation Goals in the University System of Georgia," pp. 3-4, 12, 14, 15, 16. Financial aid is crucial to student retention. Yet blacks are now relatively less likely to receive assistance than at the beginning of the plan; in 1978 blacks constituted 36 percent of aid recipients; in recent years they have been only about 30 percent. During the last two years, the average dollar amount received by black recipients has been less than that received by white recipients.

6. Employment of Black Faculty and Administrators at TWIs. None of Georgia's traditionally white four year institutions has ever achieved its goals for either black faculty or black administrators at any level, and for the most part they have not even come close, see 1987 Summary, pp. A18-A21. The most prestigious institutions, the universities, are the farthest from the goals, id. Junior colleges succeeded in meeting their goals for black administrators and faculty positions not requiring a doctorate -- but only in the last two years, id.

The state seems to have implemented many of the state-level measures, which were largely new in 1983, see SR 1985, pp. 46-47; 1987 Summary, pp. 49-51. This burst of activity has apparently brought results, since the number of full time black faculty members hired in the last two years reported was significantly higher than in previous years and above the officially determined level of availability, see our Attachment, p. A-8. Implementation was not complete, however. For example, an annual "recruitment mission" is supposed to visit universities producing significant numbers of black doctoral graduates, but the first such mission, in 1984, visited only two institutions and the second only three, SR 1985, p. 47; 1987 Summary, p. 50.

Moreover, implementation and reporting of individual institutional measures have been very weak. There were no institutional level reports before 1984, and in 1985 OCR stated that the new reports "did not adequately supply" information on the extent of implementation, and even concluded that its review of certain evaluations "raised many questions about the accuracy of the reports" and "about the commitment of certain institutions to bring about the stated objectives" of the plans reviewed, SR 1985, pp. 44-46. OCR's latest document is silent about these deficiencies.

7. Non-academic Employment of Blacks at TWIs. In most categories of non-academic employment in Georgia's higher education system, circumstances have improved little for blacks, who remain overwhelmingly concentrated in service/maintenance jobs and poorly represented in professional, secretarial, technical, and skilled crafts positions. Indeed, in professional, in technical/paraprofessional and in skilled crafts positions, the

percentage of blacks in the higher education system statewide is lower now than it was in 1978-79.

8. Representation of Blacks on the Board of Regents. Although blacks constitute over 25 percent of Georgia's population, during most years of the state's plan only two of 15 members of the Board of Regents were black. That number was increased, but only recently, and only to three.

* * * * *

On the basis of these many deficiencies in Georgia's performance, we conclude that the state is in serious default on its plan and Title VI, both in its wholesale failure to reach most of its goals, and in its refusal to carry out many of the measures promised in the plan. The success realized in limited areas, such as black graduate student enrollment and black faculty hiring in the last two or three years, shows that when the state does make a real effort, it can reach its goals. But it has fallen far short of making that real effort.

OCR's latest summary of the state's performance, unfortunately, suggests that rather than carrying out its enforcement responsibilities, the agency intends to disregard Georgia's continuing Title VI violations altogether. Praising the state's performance effusively, OCR largely omits mention of measures not implemented. But part from its refusal to recognize the state's wide-ranging default on promised measures, OCR wholly abdicates its responsibility when it -- ostrich like -- ignores and fails to act upon the state's failure to achieve meaningful desegregation.

C. The Backdating Scandal.

In what is perhaps the most dramatic confession of OCR misconduct in the 17 year history of the Adams litigation, the Department has now admitted that employees in a majority of OCR's 10 regions across the country have been backdating documents, thereby covering up the extent of OCR's noncompliance with timeframes ordered by Judge Pratt. Under the Court's Orders, OCR is required to process complaints of discrimination and conduct compliance reviews according to a series of timeframes. Upon receiving a typical complaint, for example, OCR must acknowledge its receipt within 15 days, must issue a letter of finding within 90 days of receipt of the complaint, must attempt to secure corrective action where discrimination is found within another 90 days, and must commence enforcement proceedings within 30 days if compliance cannot be secured voluntarily. Similar time deadlines apply to compliance reviews. Moreover, the District Court's order directs OCR to report to the plaintiffs every six months the extent of its compliance with these time rules.

With respect to the processing of complaints, the most recent reports to plaintiffs have shown an extraordinarily high rate of compliance by, for example, OCR's Region I in Boston with respect to its acknowledgement of receiving complaints and the issuance of letters of findings: 194 out of 194 of the complaints received during FY 1985 and 1986 were allegedly acknowledged on time and 160 of 163 letters of findings were timely issued. Now it has been admitted that these figures are a fraud on plaintiffs and the Court. When the Inspector General's Office of the Department of Education recently looked at 35 files of OCR's Boston office, it found that 23 of them reflected backdating of the letters of acknowledgement and findings in an obvious effort to report compliance with Judge Pratt's Order which did not in fact occur. Similar findings of what OCR prefers to call "discrepancies" have been found in the majority of regions across the country (December 5, 1986 memo from Edward A. Stutman to Alicia Coro attached to March 13, 1987 Report to Court, p. 3):

Region IV	14 of 32 cases examined
Region VI	18 of 26 cases
Region VII	17 of 36 cases
Region IX	7 of 20 cases
Region X	7 of 20 cases
Region VIII	"due date was incorrectly regarded as met in series of 10 cases"

Thus far from being an isolated problem region, it is clear that Boston's falsifying of reports on timeframe compliance is representative of such agency misconduct across the nation.

Nor does the backdating appear to be a new problem. OCR employees admitted to the Inspector General's investigator that the practice has been common knowledge and has been prevalent in the Boston Region for approximately two to three years.

A particularly pernicious aspect of the agency's effort to cover up its failure to meet the court-ordered time rules has taken the form of inducing complainants to withdraw their complaints in protracted investigations violative of the time deadlines. For example, one OCR employee told the Inspector General representative that where a proposed adverse finding was under review in a 1985 case, the then Director of Boston's Elementary and Secondary Education directed her "to contact the complainant and attempt to persuade the complainant to withdraw the complaint so that the June 30, 1985 deadline would not be missed."

Still another part of the problem has taken the form of abuse of Judge Pratt's "tolling" provision which allows OCR to toll the timeframes due to circumstances beyond the agency's control such as the unavailability of a material witness. As the Acting Regional Director of the Boston Region wrote to OCR Director Alicia Coro on July 16, 1986, cases "which no longer are eligible to remain tolled are not removed promptly when justification ceases" (p. 6).

To understand the seriousness of the backdating, the misreporting of when enforcement steps have been taken and the cover up of OCR's noncompliance with the Court-ordered timeframes, it is necessary to sketch briefly their evolution. For the timeframes were mandated by the Court to remedy the principal OCR practice challenged in Adams--prolonged delays at every step of the enforcement process such that "justice delayed" had become "justice denied."

In its first Adams Order, the District Court in 1973 imposed deadlines on OCR's disposition of long pending Title VI complaints and compliance reviews. Rejecting OCR's attempted "absolute discretion" excuse for its long delays and inaction, Judge Pratt and the Court of Appeals held that the discretion of OCR is limited and that enforcement deadlines in identified pending cases were required to prevent the violation of plaintiffs' rights. Soon after these 1973 rulings, plaintiffs learned that OCR was continuing its practice of extensive delays at both the investigative and negotiating phases of Title VI enforcement. The District Court then concluded in 1975 that a second decree was necessary, imposing time limits not merely on the disposition of pending OCR cases but also on agency processing of future Title VI race discrimination matters. These timeframes set forth in paragraph F of the 1975 Supplemental Order were the precursors of the time rules applicable to OCR today.

In 1976 OCR argued in a motion for modification that it could not simultaneously comply with its obligations under the 1974 order with respect to race discrimination and meet its other enforcement obligations. Following negotiations among the parties, OCR agreed to similar timeframes that were then incorporated in an Order of the Court in 1976. This Order also added important elements of flexibility to facilitate OCR's compliance with the time rules which permitted OCR to except a certain percentage of cases from the deadlines because of excessive workload or complexity.

Nevertheless within another year it had become clear that OCR was defaulting on the Court Order in major respects: a backlog of hundreds of unresolved complaints had accumulated along with wide-ranging violations of the timeframe requirements. Further judicial proceedings followed, after which the parties carried on extensive negotiations culminating in a 1977 Consent Decree in which OCR agreed to apply the timeframes to all cases relating to discrimination based on race, sex, national origin and handicap at all levels of schools. Once again OCR was given the flexibility to except a certain percentage of cases from the time requirements.

OCR's initial efforts to comply with the 1977 Consent Decree met with considerable success. This progress did not last, however, and by 1980 OCR regressed again to massive delays. Thus in November 1980 as many as 88 percent of the agency's 225 compliance reviews were, in OCR's words, "behind schedule." Similarly, with respect to complaint processing during the period October 1980-April 1981, letters of findings were not issued on time in more than 60 percent of the complaints. Based on such data, plaintiffs returned to Judge Pratt and moved for contempt relief. After a three day hearing and extensive briefing during which OCR called for a "re-examination of the whole time frames approach, its workability and productiveness" (OCR's Pre-Hearing Memorandum at 2), Judge Pratt adhered to his view concerning the continuing need for mandatory timeframes:

> I am satisfied that overall time frames are required, maybe not the precise ones we've got now. But the importance of the timeframes, not only in getting the work done, I think is due to the fact that it will impress upon the people who observe those timeframes that after all we've got, first of all, a Constitution; we've got certain acts of Congress, and we've got to pay attention to those things (Joint Appendix, Adams v. Bell, D.C. Cir. Nos. 83-1590, 83-1516 p. 433).

Accordingly, when Judge Pratt issued his March 11, 1983 Order currently applicable to OCR, he reimposed the time rules of the earlier orders, but made appropriate modifications to render them more effective. Thus while retaining the basic "90 day-90 day-30 day" time rules for complaints and compliance reviews, the Judge permitted longer deadlines for complex cases and those requiring policy development and allowed tolling of the timeframes for witness unavailability and other circumstances beyond OCR's control.

As this review of the history of the Adams litigation demonstrates, undue delays and inaction have characterized OCR's conduct over many years, requiring the federal court continually to mandate strict time deadlines as the necessary remedy to protect plaintiffs' statutory rights. In masking its violation of these time rules by the backdating of documents, OCR both defies the Court directives and violates the right of victims of discrimination to timely civil rights enforcement.

We urge this Subcommittee to exercise its oversight responsibility over OCR by scrutinizing all aspects of this backdating scandal. More specifically, we respectfully urge you to ascertain the origins and causes of this misconduct, the extent to which it has infected the agency's operations, the steps which OCR is taking to discipline its offenders and the corrective measures being adopted by the agency to prevent its reoccurrence.

I thank you for the opportunity to appear before you this morning and welcome any questions which you may have.

GEORGIA: ACHIEVEMENT OF DESEGREGATION GOALS

		Percent of goals achieved			
	Goals	78-79	83-84	84-85	85-86
1	Parity in B/W college going rates	51.0%	46.0%	43.5%	38.4%
2	Number of black HS grads entering TWIs		49.5	57.5	52.9
3	Total black enrollment at TWIs	90.9	71.9	73.6	74.7
4	Parity of B/W rates of entry to graduate studies	157.8	120.5	101.0	107.5
5	Parity of B/W rates of entry to professional schools	59.1	53.8	84.5	68.8
6	Black FT faculty hiring at TWIs	64.0	95.5	147.2	110.7
7	Black FT master's faculty at TWIs	38.3	88.5	54.7	63.2
8	Black FT doctoral faculty at TWIs	27.5	72.1	60.0	58.3
9	Black members of governing boards	52.5	49.7	74.6	?

Georgia: Achievement of Desegregation Goals

Where the goal is parity, the percentage represents the black rate as a percentage of the white rate. Otherwise the goals are a fixed number or percentage, and the percentage given represents the number or percentage actually attained as a percentage of that projected as a goal.

1. Parity in black and white college-going rates: The college-going rate is the number of students entering any of Georgia's public institutions of higher education for the first time in the fall of the year, divided by the number of high school graduates the preceding spring. Table 2a.

2. Black entry to TWIs: percentage of black high school graduates entering TWIs for the first time. Table 3a.

3. Black enrollment at TWIs: the percentage of blacks actually enrolled at all levels of the four year TWIs, as a percentage of total enrollment. Table 3b.

4. Parity of black and white rates of entry to graduate studies: The rate of entry is the number of in state students enrolling in graduate studies for the first time (both full and part time), divided by the number of in state recipients of bachelor's degrees. Table 4a.

5. Parity of black and white rates of entry to professional schools: The rate of entry is the number of in state students enrolling in professional schools for the first time (both full and part time), divided by the number of in state recipients of bachelor's degrees. Table 4a.

6. Black full time faculty hiring at TWIs: Blacks hired for faculty in the preceding academic year; thus 83-84 column here refers to blacks hired in the 1982-83 school year. Table 7c.

7. Black master's faculty at TWIs. Full time. Table 7b.

8. Black doctoral faculty at TWIs. Full time. Table 7a.

9. Black membership on Georgia's Board of Regents (appointed by the Governor). Table 8a.

Table 2a

GEORGIA SYSTEM: BLACK VS. WHITE COLLEGE GOING RATES

Goal: Parity

Fall	B rate	W rate	% points disparity	Index of disparity
1978	17.5	34.3	16.8	51.0%
1979	17.2	35.3	18.1	48.7%
1980	18.0	34.0	16.0	53.0%
1981	18.8	37.6	18.8	49.9%
1982	18.5	38.8	20.3	47.6%
1983	17.4	37.9	20.5	46.0%
1984	18.3	42.0	23.7	43.5%
1985	16.9	44.0	27.1	38.4%

Sources: DBS Trends, p. 12.
DBS 6000, p. 6.
10,000 & 11,000 series data, Bl.
OCR: Elementary & Secondary Schools Survey.

Table 3a

GEORGIA TWIs: FIRST YEAR BLACK ENROLLMENT

Goal: increase to 3118 in 1982

Fall	# black entrants	% black entrants	Goal	% goal reached
1978	1,355	12.9%		
1979	1,467	12.8%		
1980	1,477	13.1%		
1981	1,720	13.2%		
1982	1,609	12.6%	3,118	51.6%
1983	1,544	12.6%	3,118	49.5%
1984	1,794	14.5%	3,118	57.5%
1985	1,650	12.7%	3,118	52.9%

Sources: DBS Trends, p. 13.
DBS 6000, p. 33.
10,000 & 11,000 series data, Bl.
SR 1984, p. 39.

Table 3b

GEORGIA TWIs: PERCENT TOTAL BLACK ENROLLMENT -- ALL LEVELS

Fall	Number blacks	Number goal	% goal reached	Percent blacks	Percent goal	% goal reached
1978	9,907	10,896	90.9%	10.1%	11.6	87.1%
1979	9,388	12,154	77.2%	9.6%	12.1	79.2%
1980	10,266	13,222	77.6%	10.5%	13.0	81.2%
1981	10,549	14,465	72.9%	10.8%	13.9	77.9%
1982	10,935	15,513	70.5%	10.3%	14.6	70.6%
1983	11,152	15,513	71.9%	10.4%	14.6	71.1%
1984	11,421	15,513	73.6%	10.7%	14.6	73.0%
1985	11,587	15,513	74.7%	10.6%	14.6	72.7%

Sources: FR 1987, pp. A-14a, A-15.

Table 7a

GEORGIA TWIs: BLACK FULL TIME DOCTORAL FACULTY

Fall	Number	Actual percent	Goal	Percent of goal
1978	35	.98	3.57	27.5%
1979	51	1.41	3.55	39.7%
1980	62	1.72	3.55	48.5%
1981	57	1.58	3.55	44.5%
1982	66	1.79	3.55	50.4%
1983	97	2.56	3.55	72.1%
1984	86	2.28	3.80	60.0%
1985	95	2.45	4.20	58.3%

Sources: DBS Trends, p. 72.
DBS 6000, p. 68.
FR 1987, p. A-20.
10,000 & 11,000 series data, EEO-6 Supp.

Table 7b

GEORGIA TWIs: BLACK FULL TIME MASTER'S LEVEL FACULTY

Fall	Number	Percent	Goal	% of goal achieved
1978	69	4.14	10.82	38.3%
1979	67	4.20	?	
1980	73	4.72	?	
1981	68	4.49	7.63	58.8%
1982	53	3.72	7.55	49.3%
1983	65	3.92	7.67	88.5%
1984	74	4.61	8.43	54.7%
1985	82	5.25	7.29	63.2%

Sources: DBS Trends, p.72.
DBS 6000, p. 68.
FR 1987, p. A21.
SR 1983, p. 25.

Table 7c

GEORGIA TWIs: HIRING OF FULL TIME BLACK FACULTY

Year	Number	Percent	Goal*	% ach'd
1978-79	25	3.97	6.2	64.0%
1979-80	33	5.01		
1980-81	32	5.68		
1981-82	18	3.40	4.9	69.4%
1982-83	9	1.89	4.8	39.4%
1983-84	20	4.58	4.8	95.5%
1984-85	41	7.65	5.2	147.2%
1985-86	39	5.65	5.1	110.7%

Sources: DBS Trends, p. 116.
DBS 6000, p. 102.
FR 1987, p. A22.

*Goal constructed on basis of ratio of doctor vs. masters faculty applied to their respecti percentage goals

Table 8a

GEORGIA SYSTEM: BLACK MEMBERSHIP ON THE BOARD OF REGENTS

	Percent	Goal	% ach'd
1978-79	14.29	27.21	52.5%
1979-80	14.29	27.21	52.5%
1980-81	14.29	26.82	53.3%
1981-82	13.33	26.82	49.7%
1982-83	13.33	26.82	49.7%
1983-84	13.33	26.82	49.7%
1984-85	20.00	26.82	74.6%
1985-86	?	26.82	?

Sources: DBS Trends, p. 146.
DBS 6000, p. 116.
SR 1985, p. 49.

Table 4a

GEORGIA SYSTEM: FIRST TIME ENROLLMENT OF BLACK IN STATE STUDENTS IN GRADUATE AND PROFESSIONAL STUDIES

Goal: Parity between B/W entry rates

Fall	No. B in-st bachs	No. B entrs	B ent rate	No. W in-st bachs	No. W entrs	W ent rate	Index of disparity
Graduate studies							
1978	1,091	531	48.7%	9,535	2,940	30.8%	157.8%
1979	1,285						
1980	1,130						
1981	1,064						
1982	1,261						
1983	1,191	386	32.4%	9,971	2,682	26.9%	120.5%
1984	1,259	303	24.1%	10,048	2,394	23.8%	101.0%
1985	1,264	291	23.0%	10,807	2,315	21.4%	107.5%
Professional schools							
1978	1,091	29	2.7%	9,535	429	4.5%	59.1%
1979	1,285						
1980	1,130						
1981	1,064						
1982	1,261						
1983	1,191	36	3.0%	9,971	560	5.6%	53.8%
1984	1,259	52	4.1%	10,048	491	4.9%	84.5%
1985	1,264	42	3.3%	10,807	522	4.8%	68.8%

Source: FR 1987, p. A16

GEORGIA: SUMMARY STATISTICS -- STATEWIDE

Blacks as a percentage of ...	78-79	83-84	84-85	85-86
1 State population (1976, 1980)	27.2%	26.8%	26.8%	26.8%
2 Public school enrollment (1980)	33.5	33.5	33.5	33.5
3 High school graduates (B/W,in-state)	31.9	32.5	35.9	35.9
4 Entering freshmen (B/W,in-state)	19.7	18.1	19.6	17.7
5 Undergraduate enrollment				
Full time	17.6		16.9	16.5
Total	15.2	14.8	14.9	14.7
6 Bachelor's degrees awarded	9.9	10.4	?	?
7 Grad sch entrants (in-state)	15.2	12.2	11.0	10.7
8 Graduate enrollment	10.9	7.7	8.8	8.4
9 Master's degrees awarded	9.8	10.2	?	?
10 Doctorates awarded	4.8	3.8	?	?
11 Prof'l sch entrants (in-state)	6.2	5.9	9.2	7.2
12 Professional school enrollment	3.9	5.3	5.6	5.4
13 Professional degrees awarded	4.0	5.6	?	?
14 Full time faculty new hires	11.5	7.6	12.8	7.2
15 Full time faculty employment				
Faculty PhD	3.5	4.7	4.6	4.4
Faculty Master's	12.2	13.6	12.5	11.7
16 Non academic employment				
Professional	11.0	10.6	8.0	9.6
Secretarial/clerical	17.1	10.9	19.2	20.9
Technical/paraprofessional	28.0	23.0	22.6	22.1
Skilled crafts	19.7	20.6	16.4	18.5
Service/maintenance	70.6	65.9	65.8	66.7

Georgia: Summary Statistics -- Statewide

This table includes all institutions in Georgia's system of higher education -- junior colleges, TWIs and TBIs. Unless otherwise specified below, all percentages are based on blacks, including out of state blacks, as a percentage of a total including all races. Except for State population, Hispanics are counted separately from Blacks, Whites, etc.

1. State population, 1976 and 1980 only, Hispanics not counted separately. Table 8a.

2. Public school enrollment, 1980 only. NCES, Digest of Education Statistics 1983-84, p. 41.

3. High school graduates, including only within-state blacks and whites. Table 2b.

4. Entering freshmen, including only within-state blacks and whites. Table 2b.

5. Undergraduate enrollment. Table 2c.

6. Bachelor's degrees awarded. Table 5c.

7. Graduate school entrants, including in-state students only. Table 4b.

8. Graduate enrollment. Table 4c.

9&10. Master's degrees and doctorates awarded. Table 5c.

11. Professional school entrants, including in-state students only. Table 4b.

12. Professional school enrollment. Table 4c.

13. Professional degrees awarded. Table 5c.

14. Faculty new hires: Full time and part time. Table 7e.

15. Full time faculty employment. Table 7d.

16. Non-academic employment: Full time and part time. Table 7f.

GEORGIA: SUMMARY STATISTICS -- FOUR YEAR TWIs

	Blacks as a percentage of ...	78-79	83-84	84-85	85-86
1	State population (1976, 1980)	27.2%	26.8%	26.8%	26.8%
2	Public school enrollment 1980	33.5	33.5	33.5	33.5
3	High school graduates (B/W,in-state)	31.9	32.5	35.9	35.9
4	Entering freshmen (B/W,in-state)	12.9	12.6	14.5	12.7
5	Undergraduate enrollment				
	Full time	10.2	10.7	11.2	11.3
	Total	10.3	11.1	11.5	11.7
6	Bachelor's degrees awarded	5.8	8.0	?	?
7	Grad sch entrants (in-state)	14.8	10.9	9.5	8.7
8	Graduate enrollment	10.3	6.9	6.8	6.6
9	Master's degrees awarded	9.0	8.9	?	?
10	Doctorates awarded	4.8	3.8	?	?
11	Prof'l sch entrants (in-state)	6.2	5.9	9.2	7.2
12	Professional school enrollment	3.9	5.3	5.6	5.4
13	Professional degrees awarded	4.0	5.6	?	?
14	Full time faculty new hires	4.0	4.6	7.7	5.7
15	Full time faculty employment				
	Faculty PhD	1.0	2.6	2.3	2.5
	Faculty Master's	4.1	3.9	4.6	5.3
16	Non academic employment				
	Professional	6.4	7.8	8.0	9.3
	Secretarial/clerical	15.1	17.4	18.9	19.7
	Technical/paraprofessional	28.7	24.0	23.4	23.8
	Skilled crafts	15.5	17.1	17.1	23.4
	Service/maintenance	70.6	67.2	67.3	68.7

-- FOUR YEAR TBIs

	Whites as a percentage of ...				
17	State population 1980	72.3%	72.3%	72.3%	72.3%
18	Public school enrollment 1980	65.7	65.7	65.7	65.7
19	High school graduates (B/W,in-state)	68.1	67.5	64.1	64.1
20	Entering freshmen (B/W)	2.8	3.5	3.6	2.8
21	Undergraduate enrollment				
	Full-time	3.4	4.4	4.5	2.6
	Total	5.7	10.5	10.6	8.7
22	Bachelor's degrees awarded	2.9	12.5	?	?

Georgia: Summary Statistics -- Four Year TWIs and TBIs

This table includes only traditionally white or traditionally black four year institutions in Georgia's system of higher education. Unless otherwise specified below, all percentages are based on blacks or whites, including those from out of state, as a percentage of a total including all races. Except for State population, Hispanics are counted separately from Whites, Blacks, etc.

Blacks at TWIs

1. State population, 1976 and 1980 only, Hispanics not counted separately. Table 8a.

2. Public school enrollment, 1980 only. NCES, Digest of Education Statistics 1983-84, p. 41.

3. High school graduates, including only within-state blacks and whites. Table 2b.

4. Entering freshmen, including only within-state blacks and whites. Table 3a.

5. Undergraduate enrollment. Table 3c.

6. Bachelor's degrees awarded. Table 5d.

7. Graduate school entrants, including in-state students only. Table 4d.

8. Graduate enrollment. Table 4e.

9&10. Master's degrees and doctorates awarded. Table 5d.

11. Professional school entrants, including in-state students only. Table 4d.

12. Professional school enrollment. Table 4e.

13. Professional degrees awarded. Table 5d.

14. Faculty new hires: Full time and part time. Table 7c.

15. Full time faculty employment. Tables 7a, 7b.

16. Non-academic employment: Full time and part time. Table 7g.

Whites at TBIs

17. State population, 1980 only, Hispanics not counted separately. U.S. Bureau of the Census, County and City Data Book 1983, p. 2.

18. Public school enrollment, 1980 only. NCES, Digest of Education Statistics 1983-84, p. 41.

19. High school graduates, including only within-state blacks and whites. Table 2b.

20. Entering freshmen, including only within-state blacks and whites. Table 1a.

21. Undergraduate enrollment. Table 1b.

22. Bachelor's degrees awarded. Table 1c.

Mr. Weiss. Ms. Greenberger.

STATEMENT OF MARCIA D. GREENBERGER, MANAGING ATTORNEY, NATIONAL WOMEN'S LAW CENTER

Ms. Greenberger. Thank you, Mr. Chairman. I am Marcia Greenberger with the National Women's Law Center. I am counsel to the title IX plaintiffs in the *Adams* v. *Bennett* case, and the plaintiffs in the *Women's Equity Action League* v. *Bennett* case. Both of those cases have the same timeframes which apply to them. I am pleased to have the opportunity to testify today, and with me is Carol Beier, also with the National Women's Law Center.

I appreciate the fact that my full statement will be made a part of the record, and therefore, I will just summarize the written statement.

The *Adams* case filed in 1970, which has been discussed, and the *WEAL* case filed in 1974 have a long and complex procedural history, but their substance is relatively simple.

Their plaintiffs have always been and remain unwilling to accept what has often been OCR's shoddy enforcement of the right to nondiscriminatory federally funded education for minorities, for women, and for the disabled.

From the first, court-ordered timeframes have been critical tools to secure enforcement of these basic civil rights laws. By having to adhere to timeframes, OCR had to get its house in order. It had to devise a system for locating and tracking complaints and compliance reviews. It had to end its practice of simply dropping complaints and compliance reviews midstream, and it had to review and submit reports to the plaintiffs and the court as to how each region was performing.

OCR, for the last several years, has been fighting this court order in court. Now the timeframe and the tolling provisions face a new menace—deceit. As has been described, in two Office for Civil Rights reports filed recently with the court and in the third report developed by the Department's inspector general, investigators now have found serious misrepresentation of OCR's compliance with the court-ordered timeframes.

This misrepresentation involves backdating of acknowledgments, of receipt of complaints, and of letters of findings. It also involves the misuse of provisions under which the timeframes could be tolled where specific circumstances were in effect.

In addition, according to the inspector general's report which covered only region I, civil rights enforcement personnel have urged complainants to drop their actions rather than own up to OCR's *Adams* due dates, and as we in fact had testified in this subcommittee's important hearings on the Office for Civil Rights last year, we had heard of similar tactics in other regions where complainants had been urged by Office for Civil Rights personnel to drop their complaints.

In the written remarks, starting on page 6, we have summarized some of the particular problems that were found, first with the inspector general's report, as I said, which dealt only with region I, and also with the Office for Civil Rights reports dealing with the other regions that were filed with the court, and with us as counsel for the title IX plaintiffs in the *Adams* and *WEAL* cases.

Mr. Lichtman summarized some of those important statistics, and I wanted to just highlight a few additional facts.

For example, according to the inspector general's reports, based on interviews with current and former employees of region I, one legal technician said she was told on occasion by the former director of the elementary and secondary education division or by a branch chief to backdate letters of findings. She said that backdating was common knowledge and had been prevalent in the Office for Civil Rights for 2 or 3 years.

Employees said that they raised the issue of backdating with the former regional director who reportedly agreed that the backdating was improper, but did nothing to stop it. One attorney said that 50 percent of the acknowledgments and letters of findings she saw were backdated.

In the Office for Civil Rights' second report to the court dealing with this issue, other important problems were highlighted. For example, the Office for Civil Rights concluded that in region IV, 14 of 32 cases had letter of findings discrepancies. In region VI, 18 of 26; in region VII, 17 of 36; in region 9, 7 of 20; and in region X, 7 of 20.

With respect to tolling, specific and limited circumstances under which the timeframes were allowed to be put on hold, the Office for Civil Rights reported that several regions allowed tolls to continue far past the points at which they should have been terminated. This problem was especially severe in regions IV, VI, and IX. Let me explain that the tolling provisions were in place, for example, when there was a summer recess. There was a recognition that because we were dealing with education complaints and compliance reviews, the investigations could be difficult to pursue during the summer, so if that was the case, the timeframes could be tolled during that period.

Another set of circumstances where tolling was allowed was where access to information was being blocked by the school in question.

Dealing with these tolling provisions, the Office for Civil Rights described problems that were especially severe in regions IV, VI, and IX. For example, in region IX, the investigative team reviewed 54 cases for compliance for the tolling requirements of the order. Ten cases had been tolled twice and five tolled three times. Twenty-one cases contained no documents explaining the tolling or seeking supervisory approval for it. One case which was tolled twice apparently was put on hold because a witness was on vacation during August 1984 and July 1983. Each instance of tolling, however, lasted 10 months.

A large number of cases were tolled because of the recipient's summer or winter recess, but the tolls often continued well beyond the normal period for such recesses.

The Office for Civil Rights, unlike the inspector general, did not conduct interviews with employees of the various regions. Investigators reviewed files and allowed only the regional directors to respond. Although some discrepancies could be explained, many could not.

Mr. Weiss. Your 10 minutes has elapsed. If you would like to conclude, we would appreciate it.

Ms. Greenberger. Thank you. The final point that I wanted to make with respect to these reporting problems is that they have to be reviewed in the context of the Office for Civil Rights and their general enforcement posture. We have heard very compelling problems with respect to higher education and title VI. Even those problems, however, are not the extent of the problems with respect to enforcement in the Office for Civil Rights.

Backdating and improper tolling have arisen in the context of headquarters' hostility to the very civil rights statute that it is charged with enforcing. The Department of Education sought to destroy title IX and with it title VI, 504, and the Age Discrimination Act through the twisted and narrow interpretation it urged upon the Supreme Court in *Grove City College* v. *Bell.* It allowed the regions latitude to interpret that case as they chose, issuing no uniform written policy guidance, a practice which I find parallel in many respects to the backdating problem, and they were only issuing written policy after forced to do so in the context of litigation.

They have urged negotiated settlements, forgoing the discipline of formal letters of finding spelling out discrimination to be remedied. The Office for Civil Rights has not collected key enforcement reports in the regions. In short, the Office for Civil Rights has fostered a lack of respect for its obligations which in turn has encouraged false reporting on the part of the regions. We fear the extent of the damage has yet to be uncovered.

Therefore, in conclusion, we are urging the subcommittee to continue its important work and assure a more complete and independent investigation not only of the evidence of backdating and improper tolling, but also of efforts to discourage complainant perseverance perhaps motivated by an attempt to avoid missing court due dates, but also perhaps motivated by an attempt to simply avoid enforcement of the laws.

We also hope the subcommittee will look carefully at current policies and procedures to make sure that they are adequate. In light of the serious enforcement problems that exist: recordkeeping; the failure of policy guidance from headquarters to regional offices; the due process protections actually afforded to complainants should be reviewed, and the manner in which pressure is exerted to find compliance rather than noncompliance should be examined.

A full study of the Office for Civil Rights is long overdue and fully warranted. Persons who face education discrimination at the hands of federally funded institutions are not receiving the protection they deserve. Help from Congress is sorely needed.

Thank you.

[The prepared statement of Ms. Greenberger follows:]

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(202) 328-5160

STATEMENT
OF
MARCIA D. GREENBERGER
C.A. BEIER
NATIONAL WOMEN'S LAW CENTER

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

HEARING ON
CIVIL RIGHTS ENFORCEMENT
BY THE
DEPARTMENT OF EDUCATION

ON APRIL 23, 1987

◆

Mr. Chairman and members of the Human Resources and Intergovernmental Relations Subcommittee, I am Marcia Greenberger, managing attorney of the National Women's Law Center and counsel to the Title IX plaintiffs in Adams v. Bennett and the plaintiffs in Women's Equity Action League v. Bennett. I am pleased to have the opportunity to testify today. With me is Carol Beier, also an attorney with the National Women's Law Center.

This hearing represents the most recent chapter in the extraordinarily lengthy saga of the fight for educational equity in this country. The National Women's Law Center has been a participant in that fight for its last 15 years -- not only through Adams and WEAL but in a number of other Title IX cases, including Bennett v. West Texas State University, 799 F.2d 155 (5th Cir. 1986); Haffer v. Temple University, 688 F.2d 14 (3d Cir. 1982); National Collegiate Athletic Association v. Califano, 622 F.2d 1382 (10th Cir. 1980); and American Association of University Women v. Bennett, C.A. No. 84-1881 (D.D.C. 1984). We have seen firsthand how important strong governmental action is to secure sex equity in education.

The Adams case, filed in 1970, and the WEAL case, filed in 1974, have a long and complex procedural history. But their substance is relatively simple. Their plaintiffs have always been and remain unwilling to accept what has often been OCR's shoddy enforcement of the right to nondiscriminatory federally-funded education -- for minorities, for women, for the disabled.

WEAL began with a demand that the Department of Health, Education, and Welfare begin to enforce Title IX, which, although enacted more than two years earlier, had not even seen the promulgation of implementing regulations. Title IX complainants were being put on indefinite hold or, worse, turned away, because of the total lack of enforcement guidelines. The Office for Civil Rights -- again, two full years after the passage of the statute -- had no idea how many complaints had been filed throughout the country. Its compliance review efforts, to the extent any had been made at all, were in shambles. Recordkeeping was virtually nonexistent -- a painfully accurate indicator of the lack of seriousness with which the Department took its obligation to enforce the law. It was a pattern already firmly established at HEW through its long-standing nonenforcement of Executive Order 11246 as it applied to educational institutions. There too complaints languished; compliance reviews remained unresolved; files were lost; and enforcement was so minimal as to be imperceptible. Unfortunately, promulgation of the Title IX regulations did not bring any real improvement. Serious delays in the processing of complaints and compliance reviews remained common. In 1976, the Court ordered that OCR adhere to specific time frames for the handling of Title VI and Title IX complaints and compliance reviews. It also required certain due process protections for complainants, whose rights had been trampled upon in the past.

From the first, these time frames were critical tools to secure enforcement of these basic civil rights laws. By having to adhere to time frames, OCR had to get its house in order. It had to devise a system for locating and tracking complaints and compliance reviews. It had to end its practice of simply dropping work on complaints and compliance reviews midstream. And it had to review, through reports to plaintiffs and the Court, how each region was performing.

On December 29, 1977, a consent decree was issued, building upon the principles established by the Court in its previous orders and applying them nationwide to Title VI, Title IX and Section 504. The decree was carefully crafted to allow OCR time to process what had become an enormous backlog of cases and to hire and train additional staff. Central was its continued requirement that the agency meet specific time frames for the processing of complaints and compliance reviews regarding race, national origin, sex, and disability discrimination.

Initially the consent decree caused real progress to be made; it enabled OCR to eliminate much of its backlog at the same time that it handled a heavy flow of new complaints and conducted 600 compliance reviews. While problems certainly persisted, the time frame requirements remained critically important. For example, questions arose for several years about the application of Title IX to intercollegiate athletics, and in particular to revenue-producing sports. Because of the intensity of conflicting views on this politically sensitive issue, HEW delayed in issuing policies. Complaints and compliance reviews were put on hold pending the promulgation of intercollegiate athletic policies. It was the time frames that ultimately prodded HEW to "bite the bullet" and develop policies. Without the time frames, I wonder if those policies would have been issued to this day.

By 1981, the plaintiffs in Adams and WEAL again were forced to return to the Court for further relief. Rather than particular problems, such as those in intercollegiate athletics, we began to see a general return to mounting backlogs and disarray. In 1983, the Court issued yet another order, reaffirming the essence of its 1977 decree. The Court expressed the view that OCR simply would not make an acceptable enforcement effort without some judicial coercion. The time frames that had formed the backbone of that sadly necessary coercion were retained as absolutely necessary. As Judge Pratt said, if OCR were "left to its own devices, the manpower that would normally be devoted to this type of thing, . . . might be shunted off in other directions, will fade away and the substance of compliance will eventually go out the window."

OCR still continues to battle the order. Currently the case is again before Judge Pratt on a motion to vacate the order for plaintiffs' lack of standing. Meanwhile the time frames remain in effect.

Among other things, the time frames require OCR to send a letter of acknowledgement within 15 days of receipt of a complete complaint. Within 90 days thereafter, OCR must issue a Letter of Findings (LOF) delineating whether a violation has occurred. It then has 90 days to secure voluntary compliance if a violation was found, and 30 additional days before commencement of formal enforcement action if voluntary compliance was not secured. With respect to compliance reviews, OCR must issue findings within 90 days of the beginning of the review. OCR has 180 days from the beginning of the review to seek voluntary compliance from the institution and must initiate formal enforcement action no later than 210 days after the review began if voluntary compliance cannot be secured. In addition, the Court's order provides that the investigation of complaints and compliance reviews may be tolled in limited circumstances.

Now these time frames and tolling provisions face a new menace: deceit. In two OCR reports filed recently with the Court and in a third report developed by the Department's Inspector General, investigators document serious misrepresentation of OCR's compliance with the Court-ordered time frames. This misrepresentation involves backdating of acknowledgements and LOFs and misuse of tolling provisions. In addition, according to the Inspector General's report, which covered only Region I, civil rights enforcement personnel have urged complainants to drop their actions rather than own up to OCR's missed Adams due dates. We have been told of similar tactics in other regions.

The following are examples from the Inspector General's report on interviews with current and former employees in Region I:

o One legal technician said she was told on occasion by the former director of the Elementary and Secondary Education Division or by a branch chief to backdate LOFs. Backdating was common knowledge and had been prevalent in OCR for two or three years, she said.

o A former branch chief and an equal opportunity specialist said they signed and dated -- correctly -- the LOF in a particular case only to be ordered later by the same division director to change the date to reflect compliance with Adams.

o Two employees said they raised the issue of backdating with the former regional director, who reportedly agreed that the backdating was improper but did nothing to stop it.

o One attorney said that 50 percent of the acknowledgements and LOFs she saw were backdated.

The Inspector General's investigators found 23 backdated documents in an examination of 35 files from Region I, more than 65 percent of the sample. Eight acknowledgements had been backdated, and 15 LOFs. Of the total of 23, ten had been backdated only one day. Thirteen had been backdated more than one day.

Who created this mess in Region I? The employees interviewed by the Inspector General's staff named five different individuals as those who directed the backdating. Of those five, one refused to submit to an interview. Another denied any knowledge or involvement. A third admitted her involvement but claimed to be directed by the first two and the former regional director.

The fourth, the former regional director, admitted that he had sanctioned backdating but claimed it was limited to two situations: (1) when a group of letters had to be signed on a Sunday, and (2) when a shortage of clerical help meant that a letter was typed a day late. None of the backdating, the former regional director said, was authorized for more than one day. He also said that he remembered no complaints about the practice from staff members, and that he had discussed the backdating with someone at OCR headquarters in Washington, although he couldn't remember who and did not claim to have specific approval.

The fifth, the former division director, said he was aware only of three or four LOFs that had been backdated one day because minor corrections were needed and no typist was available. One other LOF was backdated several days, he said, on the former regional director's orders. The division director claimed that he had been present in late 1984 or early 1985 during a conference call between Assistant Secretary for Civil Rights Harry Singleton and the regional directors, including the Boston regional director. Singleton expressed concern, he said, over the quantity of missed Adams due dates and instructed the regional directors to use their "imaginations" to avoid them in the future. Another employee said that the division director had claimed that an official at OCR headquarters had told him, "Everybody backdates." Both the division director and the official denied this conversation.

OCR's second Report to the Court, which covered the nine other regions not dealt with by the Inspector General, described many more significant dating discrepancies in several regions, as well as a great number of improper tolls -- sometimes stretching in an all-too-familiar way toward years of OCR neglect.

A summary of the findings outlined in that Report and its supporting documents follows:

o Regarding acknowledgements, an OCR memo attached to the Report generally supported the characterization by the Justice Department attorneys handling the case for OCR that problems were "minor." However, there were isolated dating discrepancies in some regions and there was not enough information in many situations for investigators to verify the accuracy of acknowledgement dates.

o Regarding LOFs, the memo said that there were a small number of dating discrepancies in Regions III and V and not enough information to substantiate dates in Region II. It concluded that these three regions probably did not have an LOF backdating problem. In Region IV, 14 of 32 cases had LOF discrepancies; in Region VI, 18 of 26; in Region VII, 17 of 36; in Region IX, 7 of 20; and in Region X, 7 of 20. In addition, in Region VIII, the Adams due date was regarded incorrectly as met in several cases, and at least one case was clearly backdated.

o Regarding tolling, the memo said that Regions II and V were generally in compliance, but Regions III, IV, VI, IX, and X routinely initiated tolls without an adequate basis. (Region VII apparently had few problems in this area, although some tolls went on too long; Region VIII had no cases examined for tolling problems.) Several regions allowed tolls to continue far past the points at which they should have been terminated. This problem was especially severe in Regions IV, VI, and IX. For example, in Region IX, the investigative team reviewed 54 cases for compliance with the tolling requirements of the order. Ten cases had been tolled twice, and five tolled three times. Twenty-one cases contained no documents explaining the tolling or seeking supervisory approval for it. One case, which was tolled twice, apparently was put on hold because a witness was on vacation during August 1984 and July 1985. Each instance of tolling, however, lasted ten months: (1) August 1, 1984, to June 4, 1985, and (2) July 10, 1985, to May 12, 1986. A large number of cases were tolled because of the recipient's summer or winter recess, but the tolls often continued well beyond the normal period for such recesses.

OCR, unlike the Inspector General, did not conduct interviews with employees of the various regions. Investigators merely reviewed files and allowed only the regional directors to respond. Although some discrepancies could be explained, many could not. The Justice Department attorneys representing OCR said that some of the "objectionable" practices could be attributed to "uninformed, careless, or thoughtless regional management." They also minimized the degree to which the findings described in the Report to the Court were likely to affect the accuracy of previously reported compliance rates. They instead pointed out that Acting Assistant Secretary for Civil Rights Alicia Coro had taken several steps to correct for the problems in the future.

All of these corrective actions are well and good, but we question whether OCR has done enough to inform itself of the root of the problem and its true magnitude. Certainly, with respect to Regions II through X, a thorough review has yet to be done, even on the narrow question of backdating. The samples of case files that OCR examined were extremely limited, based on an unsupported assumption about which cases would be more likely to contain backdated acknowledgements and LOFs. Moreover, no employees other than the regional directors were allowed to comment as part of the investigation.

Perhaps most to the point, OCR has not yet come to grips with how this problem fits the profile of its generally deficient approach to civil rights enforcement. Backdating and improper tolling have arisen in a context of headquarters hostility to the very civil rights statutes it is charged with enforcing. The Department of Education sought to destroy Title IX, and with it Title VI, Section 504, and the Age Discrimination Act, through the twisted and narrow interpretation it urged upon the Supreme Court in Grove City College v. Bell. It then proceeded to allow regions latitude to interpret the Supreme Court case as they chose -- issuing no uniform written policy guidance until forced to do so in the context of litigation. See American Association of University Women v. Bennett, supra. It has urged negotiated settlements, forgoing the discipline of formal LOFs spelling out the discrimination to be remedied. It has not collected key enforcement reports from the regions. In short, OCR has fostered a lack of respect for its obligations, which in turn has encouraged false reporting on the part of the regions. We fear much more damage has been done than false reporting -- as serious as that is.

Today we urge the Subcommittee to assure a more complete and independent investigation of the evidence of backdating and improper tolling and of efforts to discourage complainants' perseverance, perhaps to avoid a missed Court due date on the region's record, but perhaps also simply to remove an enforcement obligation. The examination these violations have received thus far is not enough.

Moreover, because these problems are symptomatic of OCR's pervasive aversion to its civil rights duties, it is important that this Subcommittee look carefully at current policies and procedures to make sure they are adequate in light of the serious enforcement problems that exist. Recordkeeping, the nature of policy guidance from headquarters to regional offices, the due process protections actually afforded to complainants should be reviewed. In addition, the manner in which pressure is exerted to find compliance rather than noncompliance should be examined. A full study of OCR is long overdue, and fully warranted. Persons who face education discrimination at the hands of federally-funded institutions are not receiving the protection they deserve. Help from Congress is sorely needed.

Mr. **Weiss**. Thank you very much. For the sake of streamlining the process, I am going to address all of my questions to you, Mr. Chambers. If any of the others on the panel want to respond, to clarify or expand on the responses, that would be perfectly fine.

All of you testified that the *Adams* order requires OCR to conduct investigations according to certain timeframes, is that correct?

Mr. **Chambers**. That's correct.

Mr. **Weiss**. Now why did the *Adams* court institute timeframe requirements as opposed to some other form of judicial remedy?

Mr. **Chambers**. Well, I will ask Elliott to talk further on it, but one of the bases for the filing of the lawsuit was to force OCR to process pending claims in a timely fashion.

The court found it necessary to impose timeframes in order to ensure that victims of discrimination were being accorded their rights, so that was a necessary ingredient in the court order.

Mr. **Lichtman**. Perhaps I could elaborate on some of the history.

From the outset, the problem has been refusal on the part of the agency to decide when it had information of discrimination and to follow up even after it made findings of discrimination and, at the very outset, the judge simply required deadlines for pending cases that were before the court.

The initial 1973 order specifically applied to some 200 school districts and 10 systems of higher education. We had to go back to court after that order had been affirmed unanimously by an en banc court of appeals. We had to go back to the court just a year or two later when we looked at the reports and we found the same thing happening all over again. The second time, the judge again issued specific deadlines for pending cases but felt that it was necessary to set up some time rules that apply in the future across the board to make it unnecessary for the plaintiffs to come back still a third time.

Unfortunately, as we know, it has been necessary over the years to go back time and again. Despite these orders, OCR has specifically attempted to get out from under these timeframes. As recently as 1982, the judge held a 3-day hearing on the question of the need for these timeframes, and after hearing all of the arguments of OCR over 3 days, he concluded that some sort of timetables are necessary to avoid complete elimination and erosion of the plaintiffs' rights to timely enforcement of the statute.

Mr. **Weiss**. Then initially the timeframes applied specifically to school districts that were under investigation?

Mr. **Lichtman**. That is correct.

Mr. **Weiss**. Subsequently, in 1975, the court timeframes were expanded to all investigations generally across the board, is that right?

Mr. **Lichtman**. That is generally correct. As to race complaints and race compliance reviews, that is, the allegations of discrimination on the basis of race. In 1976 and in 1977, the timeframes were extended to discrimination on the basis of sex and handicap and were applied to Northern and Western States as well as the original Southern and border States.

Mr. **Weiss**. Since the 1975 order, what has been OCR's record in complying with the timeframes?

Mr. Chambers. I think that's been described in some of the written testimony, but in general, OCR has simply failed to comply with the timeframes.

Mr. Weiss. Right. In 1986, the inspector general's investigation on one OCR regional office and a preliminary report by OCR of all regions found that the agency has been backdating documents to make them appear in compliance with the *Adams* order.

Without objection, I will enter these reports into the record.

[The reports follow:]

UNITED STATES
DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
REPORT OF INVESTIGATION CONCERNING

UNKNOWN SUBJECT(s)
Office for Civil Rights (OCR)
Region I, Boston, MA

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OIG-903

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

OI FILE NO.: 86-000290 DATE: NOV 12 1986

REPORT OF: SA J. H. Taylor OFFICE: Headquarters

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SECTION A — Narrative

On June 17, 1986 a complaint was received by the OIG Hotline alleging that Letters of Finding (LOFS) were being backdated to reflect compliance with court ordered timeframes. During an interview conducted on July 14, 1986 Loa BLISS, then Acting Regional Director, Office for Civil Rights (OCR), Boston, advised that in the past LOFS may have been backdated. On July 16, 1986 BLISS furnished a memorandum to Alicia CORO, Acting Assistant Secretary, OCR, describing unethical or unprofessional activities in OCR, Region I including her assessment of the backdating situation. (Exhibit 1).

On July 14, 1986 BLISS was requested to furnish the Office of Inspector General (OIG) specific information and Departmental documents relative to the investigation. On July 16, 1986 Alicia CORO, Acting Assistant Secretary, OCR stated OCR would not provide certain requested documents unless she was instructed to do so by the Office of General Counsel. In a memorandum dated July 18, 1986 Secretary of Education William BENNETT requested the Inspector General to take custody, secure and protect documents relative to the investigation of alleged improprieties in the Boston OCR Office. (Exhibit 2) On July 19, 1986 pertinent ED files and documents were taken into custody by the OIG and secured in the Office of the Regional Inspector General for Investigation, Boston. Additional documents and files were obtained on July 21, 1986.

Thirty five complaint and monitoring files and other pertinent documents and records (Attorney Division transmittal sheets, the Attorney Division logbook, Regional Director signature log) were examined to determine if the

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issuance dates on LOFS and/or Letters of Acknowledgement (LOAs) had been backdated. This examination identified 15 LOFs and 8 LOA's which contained dates that were inconsistent with information contained in the case file and/or other records. Date inconsistencies ranged from one day to nine days. Ten of the date discrepancies were one day while the remaining 13 discrepancies were more than one day. Of the 23 date inconsistencies identified, three had a due date which fell on a Friday. Exhibit 3 describes the 23 instances in which discrepancies on LOF or LOA dates were identified. Exhibit 4 lists the case numbers and file names of the twelve files which contained no apparent LOF or LOA date discrepancies.

Between July 21, 1986 and October 2, 1986, 24 current and former Region I, OCR employees were interviewed regarding the backdating of LOF's and LOA's issued by OCR, Boston. Memorandums of these interviews and handwritten sworn statements voluntarily furnished by certain interviewees are enclosed as Exhibits 5 through 40. These interviews disclosed the following pertinent information:

1. Eight individuals stated they were not aware that LOFS or LOAS were being backdated. (Exhibits 8, 10, 11, 19, 22, 24, 25, 31 and 37)

2. Nine individuals advised that, although they were not personally involved in the backdating of LOF's and/or LOA's, they had firsthand knowledge that it had occurred. (Exhibits 5, 6, 7, 15, 16, 17, 18, 26, 30, 35 and 40)

3. Seven individuals stated they were involved in the backdating of LOF's at the direction of someone else as described below:

    - o Eleanor CARDARELLI, Legal Technician, stated that on occasion she was asked to backdate LOF's by Louis SIMONINI, Division Director, or a Branch Chief. (Exhibit 9)

    - o Judith HALPER, Secretary, advised that when she typed the date on an LOF, Lou SIMONINI would tell her whether or not to backdate it. She stated that Branch Chiefs may have also told her to backdate but she could not recall for sure. (Exhibit 12)

    - o Cecilia LAKE, Secretary, specifically recalled that Lou SIMONINI had instructed her to backdate LOF's. She advised others may have also, but was not able to specifically recall any other individuals. (Exhibit 20)

- o Paul MCMANUS, former Branch Chief, stated Lou SIMONINI instructed him and Ethel SHEPARD-POWELL Equal Opportunity Specialist (EOS) to backdate the LOF for case number 01-86-1008. (EXHIBIT 23)

- o Julie PERRIER, Secretary, stated in the majority of cases Barbara WILSON, Branch Chief, or the responsible EOS tells her what date to put on LOF's. She recalled that there were many instances when she worked overtime to type an LOF during which Richard MCCANN, former Regional Director, Robert RANDOLPH,Supervisory EOS, and Barbara WILSON were present. All were aware the LOF was backdated. (Exhibit 32)

- o Ethel SHEPARD-POWELL, EOS, stated Lou SIMONINI instructed her and Paul MCMANUS to backdate the LOF for case number 01-86-1008. (Exhibit 34)

- o Barbara WILSON, advised that Richard MCCANN, Frank BUCCI, Deputy Regional Director, and Robert RANDOLPH had instructed her to backdate LOF's. (Exhibit 39)

4. Five individuals stated they were told by someone else that LOF's were being backdated. (Exhibits 5, 10, 15, 26 and 30)

5. Vivian BELL, EOS, stated that on two occasions she had been instructed to contact complainants and persuade them to withdraw their complaints in order to preclude the issuance of the pertinent LOF past its due date. She advised Louis SIMONINI instructed her to do this on one occasion and Martha HUFF, Branch Chief, instructed her to do so on the other occasion. (Exhibit 5) Rance O'QUINN, EOS, advised he too had been instructed to contact a complainant and convince them to withdraw their complaint so that the LOF due date would not be missed. O'QUINN stated he received these instructions from Lou SIMONINI through Paul MCMANUS. (Exhibit 30)

6. Brenda WOLFF, Attorney, stated Lou SIMONINI once demanded that she backdate her initials on an LOF or LOA which had already been backdated by Ethel SHEPARD-POWELL and Paul MCMANUS. WOLF refused. (Exhibit 40)

7. Loa BLISS stated she discussed the backdating of LOF's with Richard MCCANN on at least three occasions between approximately July 1985 and January 1986. She stated that during each discussion MCCANN agreed it was improper and should stop but never took any action to

correct the problem. (Exhibits 6 and 7) Ralph MONTALVO stated that on or about December 18, 1985 he personally gave MCCANN a letter which, in part, discussed the backdating of LOF's. (Exhibits 26, 27 and 28)

8. Loa BLISS, Brenda WOLFF and Larry HUMPHREY, the three OCR attorneys in Region I each advised that when they reviewed an LOF or LOA that had already passed the ADAMS due date they would initial but not date the last page of the copy. When they reviewed an LOF or LOA which was not already past due they initialed and dated the last page of the copy. (Exhibits 6, 7, 18 and 40)

Richard MCCANN, Frank BUCCI, Louis SIMONINI, Robert RANDOLPH and Barbara WILSON were the five Region I OCR employees individually named by other Region I OCR employees as being responsible for the backdating of LOF's. (Exhibits 9, 12, 20, 23, 32, 34, 35, 36, 39 and 40) RANDOLPH refused to submit to an interview. (Exhibit 33) BUCCI denied any knowledge of or involvement in backdating LOF's. (Exhibit 8) WILSON acknowledged she was directly involved in the backdating of LOF's but stated she was instructed to backdate by MCCANN, BUCCI and RANDOLPH.

MCCANN stated there were two types of situations when he sanctioned the backdating of LOF's. In the Spring of 1985 a "cluster" of LOF's were prepared, typed and signed on a Sunday. MCCANN stated he directed they be dated the previous Friday or Saturday as he had been told it was not legal for a letter to contain a Sunday date of issue. The other situation occurred when an LOF was not typed until the date following the LOF due date due to a shortage of clerical staff. On these occasions MCCANN stated he approved backdating the LOF but never more than one working day. MCCANN did not recall receiving any complaints regarding backdating LOF's from Loa BLISS or any other OCR employees. (Exhibit 22)

SIMONINI stated he is aware of 3 or 4 occasions when LOF's were backdated one working day. He advised that on these occasions minor corrections were necessary prior to issuance and no typist was available. He stated the corrections would be made the following day and the LOF would be backdated one day. SIMONINI recalled one occasion when MCCANN decided that an LOF should be backdated several days. SIMONINI advised the only times he could recall instructing a typist to backdate an LOF were when minor changes were made late in the day and no typist was available until the following day. He further advised that the dates he placed on copies of LOF's were accurate except when the LOF was backdated by one working day, his initialing was also backdated. (Exhibits 35 and 36)

Louis MEYI, Director, Program Review and Management Support Staff (PRMSS) advised that PRMSS is required to send LOA's to complainants and the institution complained about within 15 days after receipt of a complete complaint. These LOA's are signed by MEYI subsequent to clearance by the Attorney Division. MEYI advised that on occasion he determines LOA's are legally sufficient and mails them prior to Attorney Division clearance. He stated that on these occasions he still sends the LOA's to the Attorney Division for clearance as the Attorney's comments regarding the letters are of value to the assigned EOS. After reviewing the OCR file relating to case number 01-86-1019, MEYI was unable to explain why the LOA contained modifications suggested by the Attorney Division even though it was dated prior to their return of the letter to PRMSS.

On July 22, 1986 Loa BLISS stated that in approximately December 1985 she questioned Lou SIMONINI about the backdating problem. She advised SIMONINI subsequently told her he called Jim LITTLEJOHN, OCR Headquarters who told him everybody backdates. (Exhibit 6) This was denied by SIMONINI (Exhibit 35) and LITTLEJOHN. (Exhibit 21) On August 20, 1986 MCCANN stated he did not receive OCR Headquarters approval for backdating but advised he discussed the activity with headquarters personnel. He could not recall with whom he discussed the backdating. (Exhibit 22)

In July 1986 OCR, Headquarters initiated an independent investigation into the allegations regarding the Boston Regional OCR. On September 26, 1986 Felix V. BAXTER, Attorney, Department of Justice, Civil Division, Washington, D. C. filed a "Report to the Court" in the U. S. District Court, District of Columbia relating to Civil Action numbers 3095-70 and 74-1720. This "Report to the Court" sets forth the results of OCR's preliminary investigation and advises the court of steps being taken by the Department to prevent a recurrence. (Exhibit 41)

Background

The Office for Civil Rights (OCR) is responsible for enforcing civil rights statutes which prohibit discrimination on the basis of race, color, National origin, sex, handicap and age in programs and activities that receive assistance from the Department of Education (ED). These statutes include Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975. To accomplish this task, OCR investigates individual complaints and conducts compliance reviews to assure compliance with the statutes it enforces. With the exception of age discrimination complaints, all complaints and compliance reviews must be processed under strict time frames mandated by the U. S. District Court pursuant to a consent decree entered in the _Adams_ case in 1977.

Since 1977, the _Adams_ orders have contained the same strict time frames for processing cases:

1. OCR must acknowledge the receipt of a complete complaint or notify a complainant in writing if it is not complete within 15 days. If the complaint is incomplete, the complainant is allowed 120 days to complete the complaint following notification from OCR that additional information is needed. The date a complaint is regarded as "complete" is the case "start" date for all other _Adams_ order time frame counting purposes.

2. OCR must investigate a complaint and issue a Letter of Finding (LOF) within 105 days from receipt of the complete complaint.

3. If a violation of civil rights law is found, OCR must negotiate and secure corrective action within 195 days from receipt of the complete complaint.

4. If corrective action (i.e., voluntary compliance) is not secured, OCR must initiate formal enforcement action within 225 days from the receipt of the complete complaint.

5. With regard to compliance reviews, OCR must issue findings within 90 days from commencement of OCR's on-site visit to the institution. Where no on-site investigation is conducted, the review is regarded as "commenced" on the date OCR requests data from the recipient. If the institution is found not to be in compliance, OCR has 180 days from the commencement of the review to seek voluntary compliance and must initiate formal enforcement action within 120 days of the date the review is commenced.

The Adams order permits exceptions to the time frames for up to 20 percent of the complaints and compliance reviews processed nationally in a fiscal year, but no more than 30 percent occurring in cases in any one statutory jurisdiction (e.g., Section 504) or in one region. These exceptions extend the investigation stage from 90 days to 180 days and the negotiation stage from 90 to 120 days. Moreover, the order permits OCR to "toll" (i.e., stop the clock) processing of complaints and compliance reviews where: (1) witnesses are not available; (2) an existing court order prohibits the Department from proceeding; (3) pending litigation involves the same institution and the same issues that would be addressed by the complaint investigation or compliance review; (4) access to information has been denied, and the Department has initiated action to secure compliance; or (5) a complaint that includes issues of age discrimination has been referred to the Federal Mediation and Conciliation Service.

PROSECUTIVE STATUS

On November 19, 1986 a copy of this Report was furnished to Richard STEARNS Chief, Criminal Division, U. S. Attorney's Office, Boston, MA for consideration of prosecution. On December 1, 1986 Mr. STEARNS advised Gary MATHISON, Regional Inspector General for Investigation, Boston, MA that he declined criminal prosecution in this matter.

FILE NUMBER: 86-000290

Interviews and Investigation Activities

1. Copy of memorandum to Alicia CORO from Loa BLISS, dated July 16, 1986.
2. Copy of memorandum to the Inspector General from Secretary Bennett, dated July 18, 1986.
3. Listing of 23 Region I, OCR case files, identified by file number and name, describing identified LOF or LOA date discrepancies.
4. Listing of 12 Region I, OCR, case files, identified by file number and name, in which no apparent LOF or LOA date discrepancies were found.
5. Memorandum of Interview of Vivian D. BELL, Equal Opportunity Specialst (EOS), OCR, Boston, conducted on August 29, 1986.
6. Memorandum of Interview of Loa BLISS, then Acting Regional Director, OCR, Boston, conducted on July 22, 1986.
7. Memorandum of Interview of Loa BLISS, Supervisory General Attorney, OCR, Boston conducted on August 11, 1986.
8. Memorandum of Interview of Frank BUCCI, Deputy Regional Director, OCR, Boston, conducted on August 14, 1986.
9. Memorandum of Interview of Eleanor CARDARELLI, Legal Technician, OCR, Boston, conducted August 12, 1986.
10. Memorandum of Interview of Ralph D'AMICO, Jr., EOS, OCR, Boston, Conducted on August 21, 1986.
11. Memorandum of Interview of Margaret E. DONOBER, part-time Secretary, OCR, Boston, conducted on August 11, 1986.
12. Memorandum of Interview of Judith A. HALPER, Secretary, OCR, Boston, conducted on August 12, 1986.
13. Memorandum of Interview of Judith A. HALPER, Secretary, OCR, Boston, conducted August 14, 1986.
14. Copy of handwritten sworn statement voluntarily furnished by Judith HALPER on August 14, 1986.

15. Memorandum of Interview of Bennie J. HAYNES, EOS, OCR, Boston, conducted on August 23, 1986.

16. Memorandum of interview of Martha L. HUFF, Branch Chief, OCR, Boston, conducted on September 29, 1986.

17. Sworn statement voluntarily furnished by Martha L. HUFF on September 23, 1986.

18. Memorandum of Interview of Lawrence D. HUMPHREY, Attorney, OCR, Boston, conducted on August 11, 1986.

19. Memorandum of Interview of Robert J. HURLEY, EOS, OCR, Boston, conducted on August 13, 1986.

20. Memorandum of Interview of Cecilia L. LAKE, Secretary, OCR, Boston, conducted on August 12, 1986.

21. Memorandum of Interview of James M. LITTLEJOHN, Director, Policy Development Division, OCR, Headquarters, conducted on October 1, 1986.

22. Memorandum of Interview of Richard V. MCCANN, former Regional Director, OCR, Boston, conducted on August 20, 1986.

23. Memorandum of Interview of Paul D. MCMANUS, former Branch Chief, OCR, Boston, conducted, on August 13, 1986.

24. Memorandum of Interview of Louis H. MEYI, Director, Program Review and Management Support Staff (PRMSS), OCR, Boston, Conducted on July 21, 1986.

25. Memorandum of Interview of Louis H. MEYI, PRMSS, Director, OCR, Boston, conducted on August 14, 1986.

26. Memorandum of Interview of Ralph MONTALVO, EOS, OCR, Boston, conducted on September 22, 1986.

27. Memorandum of Interview of Ralph A. MONTALVO, EOS, OCR, Boston, conducted on October 2, 1986.

28. Copy of handwritten letter from Ralph A. MONTALVO to Richard MCCANN dated December 18, 1985.

29. Memorandum of Interview of Rance O'QUINN, EOS, OCR, Boston, conducted on July 22, 1986.

30. Memorandum of Interview of Rance O'QUINN, EOS, OCR, Boston, conducted on August 26, 1986.

31. Memorandum of Interview of Walter A. PATTERSON, Branch Chief, OCR, Boston, conducted on August 12, 1986.

32. Memorandum of Interview of Julie E. PERRIER, Secretary, OCR, Boston, conducted on August 11, 1986.

33. Memorandum of Interview of Robert R. RANDOLPH, Supervisory EOS, OCR, Boston, conducted on July 15, 1986.

34. Memorandum of Interview of Ethel SHEPARD-POWELL, EOS, OCR, Boston, conducted on August 13, 1986.

35. Memorandum of Interview of Louis F. SIMONINI, Division Director, Elementary and Secondary Education, OCR, Boston, conducted on August 3, 1986.

36. Handwritten, sworn statement voluntarily furnished by Louis F. SIMONINI on August 3, 1986.

37. Memorandum of Interview of Susan F. VOGT, Secretary, OCR, Boston conducted on August 11, 1986.

38. Memorandum of Interview of Susan F. VOGT, Secretary, OCR, Boston, conducted on August 14, 1986.

39. Memorandum of Interview of Barbara A. WILSON, Branch Chief, OCR, Boston, conducted on August 12, 1986.

40. Memorandum of Interview of Brenda L. WOLFF, Attorney, OCR, Boston, conducted on August 11, 1986.

41. Copy of "Report to the Court" filed by the Department of Justice, Civil Division, Washington, D. C. pertaining to Civil Action ~~Numbers~~ 2095-70 and 74-1720.

MEMORANDUM

DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
REGION 1

TO: Alicia Coro
Acting Assistant Secretary
for Civil Rights, Room 5000

DATE: July 16, 1986

FROM: Los E. Bliss
Acting Regional Director
Office for Civil Rights, Region I

SUBJECT: Unethical or Unprofessional Activities in the Region I,
Office for Civil Rights

Pursuant to our discussion of July 15, 1986, attached please find a summary of activities which may indicate violations of ethical and professional standards. In addition, I have included summaries of all current staff complaints and grievances, and unfair labor practices.

Page 1

I. Criminal Charges

The Division Director of the Postsecondary Division was arraigned June 2, 1986, in State Court (Dorchester District Court) on charges of possessing a class B substance (cocaine) with intent to distribute. On July 9, 1986, the charges were dismissed by the judge without prejudice, rejecting the request of the District Attorney for a continuance. The charges have been refiled. The employee is on administrative leave until further notice.

II. Staff Grievances and Complaints

The office has received numerous complaints and grievances in the following areas: Unfair Labor Practices, grievances, EEO complaints. (IG investigations are summarized separately.) The merits of these complaints are as yet undetermined. Each pending action is summarized below and the status is accurate as of July 16, 1986.

- Unfair Labor Practices

1. B.H., complainant; F.B., respondent; filed July 10, 1986.

   Status: No action since it was received July 10. Being reviewed by FLRA deciding whether to accept, reject, or ask for more information before forwarding to Headquarters Labor Relations. (#86-27)

2. R.M., EOS, complainant; R.M., F.B., L.M., respondents; filed June 13, 1986, amended July 16, 1986.

   Status: FLRA representative appeared in the Region, July 16, 1986 to interview the grievant. (ULP #86-22)

II. Staff Grievances and Complaints (Cont.)

3. J. V., complainant; R. M., M. C., Labor Relations y, Specialist, M. H., Chief, Labor Relations, respondents; filed approximately April 1, 1986, amended June 27, 1986.

   Status: Settlement reached between employee and Headquarters labor relations. FLRA had issued a complaint and must review settlement. If approved, unfair labor practice will be withdrawn (#86-18 and #86-23)

Grievances

1. R. M., grievant, alleging unfair assignment of overall rating (Superior) for the 1985-86 performance year.

   Status: Stage II decision issued February 5, 1986 by Regional Director. Decision was sustained at Stage III by labor relations. The matter is now in arbitration.

2. W. C., EOS grievant, alleging unfair assignment of overall rating (minimally satisfactory) for 1985-86 performance year.

   Status: Stage II decision given by Louis Simonini on December 20, 1985, rejecting the claim. Stage III upheld Regional decision. (timeliness question resolved in favor of grievant)* Matter is now in arbitration.

3. V. B., EOS, grievant, alleging unfair assignment of overall rating (minimally satisfactory) for 1985-86 performance year.

   Status: Stage II decision given on December 19, 1985 rejecting her claim. Stage III upheld Regional decision. (timeliness question resolved in favor of grievant)* Matter is now in arbitration.

* Matter will probably be heard in September.

II. Staff Grievances and Complaints (Cont.)

4. R. D., EOS, grievant, three grievances as follows:

    a. Filed April 22, 1986, now at Stage III (as of 7/11/86) alleging former supervisor improperly kept notes on his performance.

    b. Filed June 11, 1986, now at Stage III alleging violations of Collective Bargaining Agreement and PMI in Stage II decision of first grievance. Management conceded error in finding first grievance untimely, but inasmuch as first grievance decision also addressed the merits, denied further relief.

    c. Filed June 19, 1986 grieving management's decision in the second grievance.

    Status: All three at Stage III

5. E. S-P., grievant, filed July 10, 1986, alleging violation of the Collective Bargaining Agreement and PMI 293-1 because management allowed her to review her employee work performance folder only in the presence of Acting Branch Chief. Grievant alleges that she wishes to review her the file without restrictions.

    Status: Grievance denied Stage I by Acting Branch Chief.
    Stage II grievance received July 16, 1986.

6. F. B., grievant, filed June___, 1986; A. C., respondent; alleging improper procedures in bypassing him in appointment of another as Acting Regional Director.

    Status: Submitted to personnel office.

- EEO

1. EOS, complainant; "management" (supervisors), respondents; filed October 10, 1985 claiming discrimination on the basis of sex and handicap (unspecified).

    Status: Formal, accepted by Department, one portion rejected. Investigation due shortly.

II. Staff Grievances and Complaints (Cont.)

2. R. M., EOS, complainant; R. M., F. B., respondents; filed December 12, 1985 claiming discrimination on the basis of national origin (Puerto Rican) in assignment of overall GPAS rating.

   Additional Information: Grievance decision adverse to complainant on GPAS rating is in arbitration. Department investigation on same issue upheld management's assignment of rating.

   Status: On-site investigation in March 1986, no decision.

3. N. G., complainant; filed April 29, 1986, L. S., Division Director, P. M., Branch Chief, respondents; alleging denial of within grade step increase on the basis of handicap.

   Status: Department is deciding whether to accept the complaint (per EEO counselor).

4. R. D., complainant, filed May 27, 1986; A. C., R. M., F. B., respondents; alleging a second stage grievance was rejected because he was a witness and representative in another EEO case.

   Status: Formal. EEO counselor challenged complaint, since it duplicates a grievance. Department is deciding whether to accept.

5. V. B., EOS, complainant; filed June 4, 1986; L. S., (Division Director), M. H., (Branch Chief), W. P., (Branch Chief) respondents. A meeting with the Regional EEO counselor took place on June 16, 1986 with M. E. The complaint is informal, and alleges discrimination based on age, sex, and race. Managers are allegedly forcing complainant into early retirement on those discriminatory bases.

   Status: Complaint must be made formal by July 25, 1986.

6. R. D., complainant; filed June 4, 1986; R. M., F. B., respondents; alleging threats were made based on alleged statements by Mr. D. concerning Mr. B's mismanagement. Complainant says threats are based on his national origin. (Italian/American)

   Status: Formal. Department is deciding whether to accept the complaint. (combined with following complaint)

II. Staff Grievances and Complaints (Cont.)

7. R. D., complainant; filed June 5, 1986; R. M., F. B., L. S., respondents; alleging his proposed reassignment from PSE to ESE was retaliatory in nature, because complainant questioned Mr. S's alleged remarks about capabilities of other employees, saying Mr. S's comments were based on discriminatory perceptions.

   Status: Formal. Department is deciding whether to accept. (Combined with preceding complaint.)

8. F. B., complainant; filed June _____, 1986 alleging approving official refused to support evaluation of rating official in his overall PMRS rating, for the past three years on the basis of complainant's national origin. (Italian/American)

   Status: In informal stage.

9. Anticipated complaint
   E. S-P, EOS, complainant; management respondent. A complaint is anticipated or is in the informal stage, and may involve casework assignments. Management has not been contacted by the EEO counselor.

- Headquarter's Investigations

1. R. M.'s, 1984-85 GPAS rating of Superior. - On June 6, 1986 Kenneth A. Mines issued a memo to the Regional Director as a result of a Departmental review of Mr. M.'s rating, upholding the assigned rating. Mr. M. was informed of this result on July 3, 1986.

2. As a result of through hotline complaints, an investigation was coordinated by the Department into allegations of personal use of government phones, coffee breaks, and alleged denigrating remarks. A memo issued June 16, 1986 by you (Ms. Coro), required certain actions to be taken. Most of these measures were taken care of by the former Regional Director. The remaining actions will be taken by the Acting Regional Director.

III. ACIMS Integrity

During the past year (July 1, 1985 - June 30, 1986) there is reason to believe that backdating of documents has occurred, particularly final documents, such as Letters of Finding issued to complainants and recipients, and closure letters, for the purpose of meeting *Adams* v. *Bennett* timeframes. Meeting *Adams* v. *Bennett* timeframes is a standard feature of the performance agreements of investigators and most managers. The reported number of "met" *Adams* dates may include cases which have been backdated, which would otherwise have been missed. These cases would have been entered into the ACIMS system falsely as closed on or before the *Adams* due dates. The LOFs would have been dated falsely on or before the *Adams* due dates as well.

Cases which no longer are eligible to remain tolled are not removed promptly when justification ceases. This may be a problem of unclear management accountability for tracking the status of these cases, or it may be intentional.

IV. Press Contacts

Regional OCR staff have either not been informed of, or have chosen to ignore, long established OCR policies on press contacts.

On July 15, 1986, the Acting Regional Director was informed by a subordinate manager that he had been telephoned at home by an investigative reporter from WEEI, radio station, with whom, he states, he had a brief conversation. The reporter claimed to have previously interviewed, five other OCR employees. He stated he would be doing a feature on the Boston Regional Office for Civil Rights, airing in September. He stated his interest was investigating "sicknesses which pervade bureaucracies." Whether other OCR employees have been interviewed has not been established.

On July 15, 1986, the Acting Assistant Secretary for Civil Rights was informed of the above events. She warned Senior staff of press policies and stated they would be held accountable for breaches. The Acting Regional Director has issued a memorandum addressing the same issue (attached).

V. Outside Activity

Most employees are aware of the prohibitions on conduct of personal activities within the office, and using government time and/or resources for private purposes. In addition, most employees are aware of, or should be aware of, the prohibition of engaging in outside employment, work, or services without express prior approval by the Secretary. (34 CFR §73.735-901)

Recently an employee was verbelly admonished for using government time and assistance of another employee to stuff and lick envelopes for a mailing of a purely private nature. In addition, other employees have brought up issues suggesting that Standards of Conduct in this area may not be consistently followed. Accordingly, the Acting Regional Director has prepared a memorandum for immediate distribution, which will be copied to Headquarters.

VI. Theft or Appropriation of Supervisory and Office Records

There has been, at least during the last year, a continuing problem with theft of official memoranda and supervisory notes, and unauthorized entry into supervisors' desks. No offenders have been reliably identified. Several examples illustrate the problem.

As recently as July 16, 1986, following the visit of the Acting Assistant Secretary for Civil Rights, Alicia Coro, on July 15, 1986, the secretary to the Acting Regional Director reported that her desk contents had been gone through, and that a volume containing indexes to all official Regional Director files had been removed from her desk. It cannot be located.

In one incident in August, 1985, a supervisor on leave in the Bahamas was provided, and quoted from, a proposed performance evaluation of, another supervisor. A letter of admonishment has been prepared for delivery when he returns to the office. He is currently on indefinite administrative leave as a result of drug charges.

One manager claims that numerous memoranda and notes have been taken from his files. He no longer keeps critical records in the office, even though the lock on his door has been changed and a lock has been installed on various file cabinets, including his.

VI. Theft - (Cont.)

A FOIA demand was received from the Union by the office quoting from a confidential memorandum sent by the Regional Director. This memorandum was not provided to anyone but the Regional Director.

One June 27, 1985, an Action Branch Chief reported that his locked desk had been entered and employee work folders tampered with. Employee work folders are used to evaluate employees. The lock's function has been impaired.

There are other instances too numerous to mention here. Management staff reportedly requested assistance last July or August from regional GSA personnel, and the Inspector General. GSA refused to investigate based on lack of staff. The Inspector General also refused to investigate.

As recently as July 14, 1986, the Inspector General was asked to investigate the June 27, 1986 break-in. The Inspector General requested a written report, and was not optimistic an investigation would be conducted.

VII. Investigations

The Inspector General is currently investigating a number of hotline complaints. The exact nature of these investigations is not known. However, on July 14, 1986, the Acting Regional Director was requested to compile a significant amount of data in support of these investigations.

Other Inspector General complaints have been turned over to the Department for investigation at the Headquarters level and for administrative handling at the regional level.

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

JUL 18 1986

MEMORANDUM TO THE INSPECTOR GENERAL

It has been brought to my attention through reports from the Acting Assistant Secretary for Civil Rights and the Deputy General Counsel for Departmental Service that certain improprieties may have occurred at the Department's regional Office for Civil Rights in Boston. Although the Department is not presently in a position to determine the veracity of these allegations, which concern the altering, unauthorized removal, or other misuse of certain documents necessary for the processing of civil rights complaints, I am concerned that these documents be secured as soon as possible to permit an impartial and thorough investigation of these allegations. I further understand that these documents may be relevant to an on-going investigation which your office is conducting.

Accordingly, I hereby request that you take custody of whatever documents may be relevant to the Department's investigation of the alleged improprieties in the Boston regional office. You are also requested to secure these documents in order to ensure their integrity and to protect them from any possible alteration, unauthorized removal, or other misuse until such time as the relevant investigation has been completed.

William J. Bennett

cc: Alicia Coro, Acting Assistant
    Secretary for Civil Rights
Wendell L. Willkie, General Counsel

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

01-85-2017

Massachusetts College of Art

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 12-19-85

Date of Letter of Finding: 12-19-85

Discrepancies Noted:

Attorney Division transmittal sheet indicates that LOF was submitted to Attorney Division for review and released by Attorney Division on 12-20-85.

Regional Director Signature Log indicates that LOF was signed by Regional Director on 12-20-85.

01-85-2022

Yale University

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 9-19-85

Date of Letter of Finding: 9-19-85

Discrepancies Noted:

Attorney Division transmittal sheet and Log Book entries indicate that LOF/SOF was submitted to and released by Attorney Division on 9-20-85.

01-85-2023

Massasoit Community College

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 10-30-85

Date of Letter of Finding: 10-30-85

Discrepancies Noted:

Attorney Division transmittal sheets indicate that LOF was submitted for review on 10-31-85, 11-6-85, 11-7-85 and 11-8-85. Attorney Division Log Book entries indicate that LOF was released by Attorney Division with minor modifications on 10-31-85.

Carbon copy of LOF contains the circled, undated approval signature of Attorney Loa Bliss.

01-85-3002

Massachusetts Rehabilitation Commission

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 1-16-86

Date of Letter of Finding: 1-16-86

Discrepancies Noted:

Attorney Division transmittal sheets and Log Book entries indicate that LOF was submitted to Attorney Division for review on 1-21-86 and 1-22-86 and cleared by Attorney Division with modifications on 1-22-86.

01-85-3006

Massachusetts Rehabilitation Commission

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 12-12-85

Date of Letter of Finding: 12-12-85

Discrepancies Noted:

Attorney Division transmittal sheet indicates submission of LOF to Attorney Division for review on 12-16-85 and release of LOF with modifications on 12-16-85.

Carbon copy of LOF contains undated signature approval of Attorney Lawrence Humphrey.

01-86-2001

Cape Cod Community College

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 2-6-86

Date of Letter of Finding: 2-6-86

Discrepancies Noted:

Attorney Division transmittal sheet and Log Book entries indicate that the LOF was submitted for review and released on 2-7-86.

Carbon copy of LOF contains the undated signature of Attorney Lawrence Humphrey and the undated and circled signature of Attorney Loa Bliss.

01-86-2020

Clark University

OCR Division: Postsecondary Division

Adams Letter of Finding Date: 4-21-86

Date of Letter of Finding: 4-21-86

Discrepancies Noted:

> Attorney Division transmittal sheet indicates that remedial action plan was submitted for review on 4-21-86 and released by the Attorney Division with modifications on 4-22-86.
>
> LOF dated 4-21-86 refers a telephone conversation with James Collins. Case file includes a handwritten memorandum to file dated 4-22-86 in which this telephone conversation is documented.
>
> Regional Director's Signature Log indicates that LOF was signed by Regional Director on 4-23-86.
>
> Carbon copy of LOF contains circled signature of Attorney Loa Bliss. Incomplete date next to her signature has been crossed out.

01-86-2034

Anna Maria College

OCR Division: Postsecondary Education

Adams Letter of Finding Due Date: 6-17-86

Date of Letter of Finding: 6-17-86

Discrepancies Noted:

> Carbon copy of LOF contains undated signature approval of Attorney Lawrence Bumphrey.
>
> Entries in Regional Director's Signature Log indicate that LOF was signed on 6-18-86.

01-85-1003

Hamden (CT) Board of Education

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: 11-11-85

Date of Letter of Finding: 11-8-85

Discrepancies Noted:

> Signature of OCR Attorney Loa Bliss on LOF carbon is circled and undated.

01-85-1012

Boston (MA) School Department

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: 1-21-86

Date of Letter of Finding: 1-21-86

Discrepancies Noted:

> Attorney Division transmittal sheet indicates that LOF was submitted for clearance and released on 1-23-86.
>
> Regional Director's Signature Log indicates that LOF was signed by Regional Director on 1-24-86.
>
> LOF carbon copy contains circled undated signature approval of Attorney Loa Bliss.

01-85-1020

Acton-Boxborough (MA) Regional School District

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: Could not be determined

Date of Letter of Finding: 10-17-85

Discrepancies Noted:

> Attorney Division transmittal sheet and Log Book entries indicate that LOF was submitted to Attorney Division on 10-21-85 and released by Attorney Division on 10-22-85.
>
> Carbon copy of LOF contains the circled signature of Attorney Loa Bliss. The "10-17-85" date appearing next to the Bliss signature has been crossed out.

01-85-1026

Randolph (VT) School District

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: 1-14-86

Date of Letter of Finding: 1-14-86

Discrepancies Noted:

> Attorney Division transmittal sheets indicate that LOF was first submitted to the Attorney Division for review on 1-14-86 and released on 1-15-86 and then again submitted and released on 1-17-86.
>
> Regional Director's Signature Log indicates that LOF was signed on 1-17-86.
>
> Carbon copy of LOF contains the undated and circled signature of Attorney Loa Bliss.

01-85-1037

Burrillville (RI) School District

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: 11-4-85

Date of Letter of Finding: 11-4-85

Discrepancies Noted:

> Typist's initials at bottom of LOF are dated 11-5-85.
>
> On carbon copy of LOF Attorney Loa Bliss circled her signature. The date next to her signature appears to have been crossed out.

01-86-1003

Union (VT) School District

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: 2-19-86

Date of Letter of Finding: 2-19-86

Discrepancies Noted:

Attorney Division transmittal sheets indicate submissions of LOF to Attorney Division on 2-20/21/24-86 and final release of LOF on 2-24-86.

Carbon copy of LOF contains the circled undated signatures of Attorneys Loa Bliss and Lawrence Bumphrey.

01-86-1008

Kittery (ME) School District

OCR Division: Elementary and Secondary Education

Adams Letter of Finding Due Date: 4-21-86

Date of Letter of Finding: 5-15-86

Discrepancies Noted:

Attorney Division transmittal sheet indicates submission of LOF to Attorney Division on 5-16-86 and release of LOF by Attorney Division on 5-16-86.

LOF dated 5-15-86 refers to a 5-13-86 letter from Kittery School District. Kittery letter has an OCR, Boston receipt stamp of 5-19-86.

LOF carbons produced by EOS Ethel Shepard-Powell indicate EOS and Branch Chief sign-off on 5-19-86.

01-85-2024

Boston University

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 10-1-85

Date of Acknowledgement Letter: 9-27-85

Discrepancies Noted:

> Attorney Division transmittal sheet indicates that acknowledgement letter was submitted to Attorney Division for review on 9-25-85 and was released by Attorney Division on 10-1-85.

01-86-1009

Rutland (VT) School District

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 1-7-86

Date of Acknowledgement Letter: 1-7-86

Discrepancies Noted:

> Attorney Division transmittal sheet and Attorney Division Log Book entries indicate that acknowledgement letter was submitted to Attorney Division for review on 1-7-86 and released by Attorney Division on 1-8-86.

01-86-1019

Maine Department of Education and Cultural Services

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 4-24-86

Date of Acknowledgement Letter: 4-24-86

Discrepancies Noted:

> Attorney Division transmittal sheet and Attorney Division Log Book entries indicate submission of acknowledgement letter to Attorney Division on 4-24-86 and release of letter with suggested modifications on 4-25-86. Suggested modifications appear in acknowledgement letter dated 4-24-86.

01-86-1031

Southington (CT) Board of Education

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 6-18-86

Date of Acknowledgement Letter: 6-18-86

Discrepancies Noted:

Attorney Division transmittal sheet and entries in Attorney Division Log Book indicate that acknowledgement letter was submitted to Attorney Division on 6-17-86 and released by Attorney Division on 6-19-86.

01-86-1032

Thompson (CT) Board of Education

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 6-20-86

Date of Acknowledgement Letter: 6-20-86

Discrepancies Noted:

Attorney Division transmittal sheet and Log Book entries indicate that acknowledgement letter was submitted to Attorney Division for clearance on 6-19-86 and released by Attorney Division on 6-23-86.

01-86-2079

Northern Essex Community College

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 2-20-86

Acknowledgement Letter Dated: 2-20-86

Discrepancies Noted:

Attorney Division transmittal sheet and Log Book entries indicate that acknowledgement letter was submitted to Attorney Division for review on 2-20-86 and released by Attorney Division on 2-21-86.

01-86-2082

Western New England College School of Law

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: Could Not Be Determined

Date of Acknowledgement Letter: 3-12-86

Discrepancies Noted:

> Attorney Division transmittal sheets indicate that acknowledgement letter was submitted to Attorney Division for clearance on 3-13-86 and 3-17-86 and was released by Attorney Division on 3-18-86.

01-86-2084

Wentworth Institute of Technology

OCR Division: PRMS

Adams Acknowledgement Letter Due Date: 4-17-86

Date of Acknowledgement Letter: 4-17-86

Discrepancies Noted:

> Attorney Division transmittal sheet and Log Book entries indicate that acknowledgement letter was submitted to Attorney Division for review on 4-15-86 and released with suggested modifications on 4-18-86. The suggested modifications appear in the acknowledgement letter dated 4-17-86.

01-84-6004	University of New Hampshire
01-85-6005	New Hampshire Vocational Technical College
01-86-2004	North Shore Community College
01-86-2010	Bentley College
01-86-2011	Smith College
01-86-2013	Harvard University
01-86-2026	Western New England College
01-86-2033	University of Mass./Boston
01-86-2078	New England School of Law
01-86-2090	Lyndon State College
01-86-3001	Massachusetts Rehabilitation Commission
01-86-3007	Massachusetts Rehabilitation Commission

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

VIVIAN D. BELL, EOS, Elementary and Secondary Education Division, OCR, Boston was interviewed at the Office of Inspector General, Boston on August 29, 1986 by Special Agents Gary E. Mathison and Kathryn P. Baziuk. BELL provided the following information in substance:

She has been employed within the Elementary and Secondary Education Division for ten years.

It is her understanding that LOFs issued by the Elementary and Secondary Education Division have been backdated to meet the Adams due dates. She has learned of this practice through conversations she has had with BEVERLY BROWN, an EOS assigned to the Elementary and Secondary Education Division. BROWN has told her that several LOFs have been backdated and that Division Director LOUIS SIMONINI directed the backdating.

BELL believes that the backdating has been occurring for the two year period that SIMONINI has served as Division Director. SIMONINI has told Division employees that under no circumstances will an Adams due date be missed. BELL advised that backdating has not occurred on any of her cases.

BELL stated that in June of 1985 she was working on two old cases that were expected to be completed by June 30, 1985. On both cases the Adams due dates had long-since passed. One of the cases involved the Connecticut Department of Youth and Children Services. An adverse finding had been determined and the draft LOF was under review by the Attorney Division. In this case BELL was directed by SIMONINI to contact the complainant and attempt to persuade the complainant to withdraw the complaint so that the June 30, 1985 deadline would not be missed. SIMONINI reportedly told her that she should tell the complainant to withdraw the current complaint and later re-file a new complaint. BELL was able to persuade the complainant to withdraw the complaint. To her knowledge the complainant never re-filed a complaint.

The second case was Gardner v. Quincy School District. In this case no violation had been determined and an investigative report was in preparation. BELL's immediate supervisor MARTHA HUFF directed BELL to contact the complainant and convince the complainant to withdraw the

08/29/86; 09/02/86; dap; 86-000290

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complaint because she (HUFF) did not want to miss the due date. BELL made the contact and the complainant withdrew the complaint. BELL later learned that OCR Attorney LOA BLISS had been told by HUFF that a withdrawal of the complaint would be sought and that BLISS staunchly disapproved of any such contact with the complainant.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED: Loa Bliss
Acting Regional Director
Office for Civil Rights, Region I

DATE OF INTERVIEW: July 22, 1986

PLACE OF INTERVIEW: IG Office, Boston, MA

INTERVIEWED BY: J.H. Taylor, Gary E. Mathison
Special Agents

MS. BLISS was interviewed regarding her knowledge of Adams Order Violations allegedly occurring in the Region I OCR office. During the interview MS. BLISS furnished the following pertinent information:

1. She has held her current position since July 7, 1986. From April 5, 1985 until July 7, 1986 she was Chief Civil Rights Attorney, Region I. From May 1979 until April 5, 1985 she was a Civil Rights Attorney in the Denver OCR office.

2 When her initials appear on a "sign off" sheet with no date, it means that her review of the subject document occurred after the date typed on the document. However since arriving in Boston there have been 3 or 4 occasions when she was away from the office at the time the final copy was typed after she had approved a draft. She stated that on these 3 or 4 occasions she initialed the "sign off" form after the letter of findings was sent out to complete the file. She advised that on these occasions she did not date her initials.

3. MS. BLISS advised that she initially discussed the backdating problem with MCCANN (then Regional Director for OCR) in approximately July 1985. She again discussed it with him in

07/22/86; 07/23/86; dap; 86-000290

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approximately September 1985 and January 1986. She stated that during each discussion MCCANN would agree that it was improper and that it should stop, but he never took any action to correct the problem.

4. She stated that in approximately December 1985 LARRY HUMPHREY, another OCR Attorney questioned her about backdating which prompted her discussion with MCCANN in January 1986.

5. In approximately December 1985 she questioned SIMONINI about the backdating problem, however he gave her no response she could recall. She advised that sometime later SIMONINI told her he had called JIM LITTLEJOHN, OCR, Headquarters, who told him everybody does it (backdating).

6. She stated she has discussed the backdating problem with OCR employees MARCY HUFF and RALPH D'AMICO. During a staff meeting conducted on July 9, 1986 HUFF asked if they would continue backdating documents. During this same meeting it was reported the Boston OCR office had 5 overdue cases, however PRIMS Director LOUIS MEYI commented they actually had 25. MS. BLISS was unable to explain the basis for MEYI's comment.

7. MS. BLISS advised she felt the backdating began innocently, but snowballed when no-one took action to stop the practice.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Loa Bliss Supervisory General Attorney Office for Civil Rights Region I
DATE OF INTERVIEW:	August 11, 1986
PLACE OF INTERVIEW:	IG Office, Boston, Massachusetts
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MS. BLISS was interviewed regarding her knowledge of Adams Order Violations allegedly occurring in the Region I OCR office. During the interview MS. BLISS furnished the following information:

1. BLISS served as Acting Regional Director for OCR in Region I from July 7, 1986 until August 9, 1986. She is presently serving in her former position as Supervisory General Attorney.

2. BLISS stated that in approximately April of 1985, when she first came to the Boston Civil Rights Office, a heavy workload existed. The Boston office had been instructed by Headquarters to close approximately 50 cases by June 30, 1985. BLISS believed that it was during this crunch period that an employee raised a question as to whether typing associated with Letters of Finding (LOF) could not be finished later and the necessary documents backdated. BLISS stated she was not overly concerned with this occurring since it was her impression that all investigative work on these cases had been completed and the delay was due to typing restrictions. However, soon thereafter BLISS noticed that employees began to do whatever they wanted. Documents were backdated up to 5 days for reasons other than typing restrictions. BLISS stated that this practice bothered her. BLISS believes that this is when she first discussed the backdating problem with RICHARD MCCANN (then Regional Director for OCR). MCCANN agreed that a problem did exist but never took any action to correct the problem.

kac
9/3/86; 9/5/86; dap; 86-000290

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3. BLISS stated she believed one day, as she exited the office for the day, she may have dated a document the last day of the Adams due date prior to her review; but this caused her concern and as a result she decided to research her need to date reviewed documents. BLISS stated her research revealed that the Investigative Procedures Manual did not show an obligation to date. Her responsibility was only to determine the legal sufficiency of the document. As a result she decided to no longer date past due documents but to initial the document and circle her initials. BLISS stated she also advised her staff they had no obligation to date documents. She instructed them to either initial the document and provide the correct date or simply initial the document. BLISS did inform the staff of her intention to initial and circle her initials on past due documents.

4. BLISS estimated that she was aware of approximately 5-10 cases which she believed were backdated. When informed our review had disclosed more than 10 cases of backdating, BLISS stated she recalled that at a Senior Staff Meeting the PRMSS Director (LOU MEYI) admitted there were approximately 25 cases.

5. BLISS stated she had no knowledge of employee drug use either on or off the job nor was she aware of any employee abuse of annual or sick leave. BLISS also stated she was not aware of employees taking excessively long lunch breaks. As to business being conducted on Government time other than official business BLISS stated she was aware of a prior investigation of LOU SIMONINI making and receiving non-government related telephone calls and was informed by the Deputy Director that BEN HAYNES was using his reader to stuff envelopes for private business.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Frank Bucci Deputy Regional Director Office for Civil Rights Region I
DATE OF INTERVIEW:	August 14, 1986
PLACE OF INTERVIEW:	I.G. Office, Boston, Massachusetts
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MR. BUCCI was interviewed regarding his knowledge of Adams Order Violations allegedly occurring in the Region I OCR office. During the interview he provided the following information:

1. He has held his current position since August 13, 1978. He just became employed by the U.S. Government with the Department of Health, Education and Welfare on December 10, 1970. He has served with the Department of Education since its inception.

2. BUCCI stated that in early 1982 his duties included reviewing every Letter of Finding (LOF) issued by the Region I OCR office. However, since his heart attack in 1984 he has not devoted time to the case process except during crisis periods.

3. BUCCI stated that when the IG investigation began he heard through office rumor that the IG was inquiring about OCR personnel backdating LOF's. He stated he was not aware of any backdating and had never witnessed any backdating. He also stated he had never been told by anyone to backdate a LOF nor had he had discussions with the Regional Directors or Division Directors about the possibility of backdating LOF's.

4. BUCCI stated he suspected backdating may have taken place because he can recall arriving at the office in the morning and noticing LOF packages dated the prior day prepared and reading for mailing.

5. BUCCI had no other knowledge regarding allegations of backdating LOF's in the Region I OCR office.

rjc

09/08/86; 09/09/86; dap; 86-000290

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OIG-301

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED: Eleanor Cardarelli
Legal Technician
Office for Civil Rights
Boston, MA

DATE OF INTERVIEW: August 12, 1986

PLACE OF INTERVIEW: IG Office, Boston, MA

INTERVIEWED BY: J.H. Taylor, Kathryn Baziuk
Special Agents

Ms. Cardarelli was interviewed regarding her knowledge of alleged backdating of LOF's and LOA's by OCR employees. During the interview she furnished the following information:

1. She has been an employee of ED/OCR since December 1983, and has served in a Legal Technician capacity for two years. Prior to this, she worked in the Elementary and Secondary Education Division of OCR where her duties included typing LOF's.
2. On occasion she was asked to backdate LOF's by Louis Simonini or a Branch Chief.
3. She never questioned the backdating activity.
4. She stated that the matter of backdating is common knowledge, and has been prevalent in OCR for approximately 2 to 3 years.

08/13/86; 08/13/86; dap; 86-000290

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OIG-001

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

RALPH B. D'AMICO, JR., EOS, Elementary and Secondary Education Division, OCR, Boston was interviewed at the Office of Inspector General on August 21, 1986 by Special Agents Gary E. Mathison and Kenneth F. Crossen. D'AMICO provided the following information in substance:

He has been employed with OCR, Boston since October 19, 1980. From that date until July 6, 1986 he served as an EOS within the Postsecondary Education Division. On July 6, 1986 he transferred to the Elementary and Secondary Education Division.

Within the Postsecondary Education Division he served as an acting branch chief on three occasions (November, 1981 through March, 1982; August, 1985 through November, 1985; and, January, 1986 through April, 1986).

He advised that an LOF, prior to issuance is always reviewed by the OCR Attorney Division. Subsequent to Attorney Division review, the LOF is typed in final form with carbons. The LOF is then circulated among Divisional and Attorney staff and the yellow carbon copy is initialed and dated by the approving staff members. The LOF is then furnished to the Regional Director for final approval and signature. Subsequent to the Regional Director's signing, the LOF is returned to the Division or Branch Secretary for dating, photocopying and mailing.

D'AMICO advised that he is not aware of any backdating of LOFs in the Postsecondary Education Division. D'AMICO qualified this statement by stating that on one or two occasions, LOFs were signed on a Saturday and backdated to the previous Friday because it was OCR's understanding that LOFs could only be issued on a business day (i.e. Monday through Friday).

D'AMICO stated that he has heard that LOFs issued by the Elementary and Secondary Education Division have been backdated to meet Adams due dates. He has no direct evidence regarding this allegation and advised that he learned of the allegation through conversations with OCR employees RANCE O'QUINN and ETHEL SHEPARD-POWELL. According to D'AMICO, in April or May, 1986 O'QUINN and SHEPARD-POWELL told him that Elementary and Secondary Education Division Director, LOUIS SIMONINI had directed them to backdate LOFs. O'QUINN also reportedly told D'AMICO that he (O'QUINN) had informed Regional Director RICHARD MCCANN of the backdating issue.

08/27/86; 08/28/86; ~~[illegible]~~ KFC; 86-000290

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OIG-001

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED: Margaret E. Donoher
Secretary (Part-Time)
Office for Civil Rights, Region I

DATE OF INTERVIEW: August 11, 1986

PLACE OF INTERVIEW: IG Office, Boston, MA

INTERVIEWED BY: J.H. Taylor, Kenneth F. Crossen
Special Agents

MS. DONOHER has been employed by ED as a part-time Secretary, OCR, Boston, MA since May, 1985. From May, 1985 until July 21, 1986 she was assigned to the Elementary and Secondary Division (E&S). Since July 21, 1986 she has been assigned to PRMS. MS. DONOHER was interviewed to obtain information regarding alleged backdating of Letters of Finding (LOF) and Letters of Acknowledgement (LOA). During the interview she furnished the following information:

1. Her duties consist primarily of typing. Since she is a part-time employee, most of her typing is given to someone else for dating after signature as she is usually not there.

2. She does not know who dates the LOF's and LOA's she types.

3. She recalled one incident when MARTHA HUFF returned an LOF she had typed, told her to reprint it and delete the information at the end showing who typed it and when it was typed. HUFF never told her why she wanted this done and she never asked.

4. Other than the incident described above, all of DONOHER's LOF's are still on discs and contain her typed initials and the date she typed them. She gave these discs to HUFF several weeks ago when she moved to PRMS.

5. She has no other knowledge regarding allegations of backdating of LOF's in the Region I OCR office.

08/12/86; 08/12/86; dap; 86-000290

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Judith A. Halper Secretary to Deputy Regional Director OCR, Region I
DATE OF INTERVIEW:	August 12, 1986
PLACE OF INTERVIEW:	IG Office, Boston, MA
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MS. HALPER has held her current position since November 1984. She was interviewed regarding her knowledge of alleged backdating of Letters of Finding (LOFs) and Letters of Acknowledgement (LOAs) issued by OCR, Region I. During the interview she provided the following information:

1. Her duties include preparing memos, taking dictation, logging in mail, time and attendance and typing for other divisions. She stated that currently she seldom types LOFs, but last year she typed many LOFs as the Postsecondary Education Division had secretarial problems.

2. After an LOF was signed by the Regional Director it was returned for dating. She stated that when she typed a date on an LOF, LOU SIMONINI would tell her whether or not to backdate it. She advised that Branch Chiefs may have also told her to backdate but she could not recall for sure.

3. She advised she felt this was a necessary procedure to show headquarters they were doing their best to meet Adams due dates.

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Judith Ann Halper Secretary to the Deputy Regional Director Office for Civil Rights Region I
DATE OF INTERVIEW:	August 14, 1986
PLACE OF INTERVIEW:	I.G. Office, Boston, Massachusetts
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MS. HALPER was interviewed to obtain information concerning alleged unofficial business being conducted during government time. During the interview she furnished the following information:

1. HALPER admitted she had performed unofficial business during government time and on government premises. She stated that FRANK BUCCI and LOU SIMONINI, two of the supervisors in the Region I OCR office, had asked her to do typing related to changes they needed made to their SF-171 forms. The SF-171 forms were being submitted for the vacated position of OCR Regional Director in Region I.

2. HALPER stated that on August 13, 1986 BUCCI asked her to make minor changes to his SF-171. She performed the requested changes on that day and admitted the changes were made during her normal duty hours and through the use of U.S. Government equipment (her typewriter). She stated that she no longer had a copy of the SF-171 as it had been returned to BUCCI upon completion of the changes. HALPER also admitted that last year BUCCI had requested her to make similar changes to an SF-171 being submitted for a vacated OCR Regional Director position in San Francisco.

3. HALPER stated that on August 13, 1986 SIMONINI also asked her to make changes to his SF-171. However, SIMONINI told her not to make the changes during government time. As a result, on August 13, 1986 she worked on SIMONINI's SF-171 for approximately 15 minutes after completion of her regular duty hours. She also

KJC

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worked on the SF-171 for approximately 15 minutes before her regular duty hours began on August 14, 1986. HALPER admitted the changes were made through the use of a U.S. Government typewriter. She stated she no longer had SIMONINI's SF-171, as she had returned it to SIMONINI, but it was her understanding that additional typing was needed.

4. HALPER stated she would be able to identify the changes she had made to both SF-171's. She also stated the typewriter ribbon and diskette she had used to make the changes were available.

5. HALPER was not aware of any other non-government related business that took place in the Region I OCR office.

6. Upon completion of the interview HALPER voluntarily agreed to provide a sworn statement relating to the typing she had done to change BUCCI and SIMONINI's SF-171's.

State of Massachusetts:
County of Suffolk: SS

I, [illegible] of [illegible] being first duly sworn do depose and state that:

I am currently employed by the U.S. Department of Education, Office for Civil Rights. I am secretary to the Deputy Regional Director and have held this position since November 26, 1984. As of November 8, 1986, I will have exactly 10 years of Federal service.

Very seldom am I asked to type anything of a personal nature for my supervisor or anyone else in OCR. However, I am listing herewith the rare occasions that I have:

① In August 1985, an opening for the Regional Director's job in San Francisco arose. My supervisor, Frank P. Bucci, was interested in it. He brought in his SF-171 and had me update it a bit (not type the whole thing). He just wanted the narrative concerning his work experience to be current and in clearer language. The process couldn't have taken any more than an hour or two. Since it was a year ago, I don't remember exactly how much time.

② In August 1986 (this week, to be exact), the Elementary and Secondary Education Division Director, Louis J. Mininni, asked me to type his SF-172 to update his 171 because Region I OCR is currently advertising for a Regional Director. Mr. Mininni stressed to me that he didn't want me to do

②

this on Government time. He suggested that I work on it before and after my tour of duty. I finished Mr. Simoni's assignment this morning (August 14, 1986). I had started it before my tour of duty (8:00) and by 8:06 had put the finishing touches on it. For the most part, I tried to adhere to Mr. Simoni's warning not to update his 171 on Government time. *

③ My supervisor, Frank P. Bucci, was also interested in being Regional Director of Region I OCR. Like Mr. Simoni Mr. Bucci is certainly well qualified. He, however, gave me his SF-171 to update (not type in full) yesterday morning (August 13, 1986). I did it on Government time, but the assignment took no more than an hour or so. Today (August 14, 1986), Mr. Bucci wants me to make the final adjustments on his 171 so that he can apply for the Regional Director's position. I don't expect that this will take too much time.

Comments: This is the extent of what I know. I have tried to answer as honestly as possible. I would like you to keep in mind, however, that it isn't my intention to get anybody into trouble. Of all the supervisors I ever had, Frank Bucci has been the best I ever had. He's always been very considerate of my feelings and is very thoughtful and fair about my workload. I can talk to him very easily and can honestly say that he is a faithful Government employee. He is going through a very stressful time right now — undeserved complaints have been filed against him by a few employees who have no reason to do so. Mr. Bucci is compassionate and

⑥

never practices discriminatory behavior. I hope that anything I've said above will not cause Mr. Bucci more upset than he's already had. I want to stress how highly I think of my supervisor.

I also think very highly of Mr. Simonini. In Mr. Bucci's absence he has acted as my supervisor. He too, has been extremely fair to me, and I don't want anything I've said above to cause him any grief. Undeserved complaints have also been filed against him, and he is aggravated enough already.

* In reference to the 171 I was typing for Mr. Simonini for the position of Regional Director OCR, Region I, I started the narrative at approximately 4:30 yesterday, the end of my tour of duty, and worked on it until 4:45. I finished it this morning (August 14 1986). I'd resumed it at approximately 7:50, 10 minutes before my tour of duty. Because I was so close to the end, and Mr. Simonini wanted it this morning, I ~~[illegible]~~ carried it over about 5 or 6 minutes after my tour of duty. For the most part, I have spent about 40 minutes on this project, with little Government time involved.

Judith A. Halper

Subscribed and sworn to before me this the 14th day of August, 1986 at Boston, MA

Kenneth J. Brown
Special Agent

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

BENNIE J. HAYNES, Equal Opportunity Specialist (EOS), Postsecondary Education Division, OCR, Boston was interviewed on August 21, 1986 at the Office of Inspector General, Boston by Special Agent Gary E. Mathison and Investigative Assistant Doreen Pulos. HAYNES provided the following information:

HAYNES advised that occasionally the dates placed at the top of LOFs are not accurate. He explained that he knows of at least eight instances when LOFs were backdated to meet Adams due dates. Two of the cases (Hughes v. Maine Bureau of Rehabilitation and a compliance review on Western New England School of Law) were cases in which he was the responsible EOS. HAYNES stated that in each of these two cases the LOFs were written by him, signed by the Regional Director, and then backdated by a clerical employee. HAYNES advised that these two LOFs were backdated at least one week and possibly as much as two weeks to meet the Adams requirement. He advised that the LOFs were not backdated because of delays caused by clerical shortages. He stated that the LOFs were simply not prepared and approved by the due dates.

HAYNES does not know who directed the two LOFs to be backdated but speculated that the backdating may have been directed by either the OCR Attorneys or his Supervisor, BARBARA WILSON. He commented that BARBARA WILSON knew that the Adam's due date would not be met in both of these cases and had conversations with him (HAYNES) with regard to missing the due date.

HAYNES stated that over the past year he has heard of at least six other cases in which LOFs were backdated. He does not recall the identity of these cases. He advised that these six cases were worked by the Elementary and Secondary Education Division and he learned of the backdating through conversations with OCR employees RANCE O'QUINN, VIVIAN BELL and BEVERLY BROWN.

HAYNES further advised that in June or July, 1985 he overheard OCR Supervisors, LOUIS SIMONINI, BARBARA WILSON and MARTHA HUFF discussing the backdating of LOFs. HAYNES stated that he overheard these conversations during the period (April through June, 1985) when OCR, Boston was under a "crunch" to complete numerous backlogged cases.

08/22/86; 08/26/86; dap; 86-000290

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OIG-301

OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

MARTHA L. HUFF, Branch Chief, Elementary and Secondary Education Division, OCR, Boston was interviewed on September 29, 1986 by Special Agents Gary E. Mathison and Kathryn F. Baziuk. HUFF provided the following information in substance:

She has been employed within OCR, Boston since May, 1973 and has served as a Branch Chief since October, 1978.

She is aware that two LOFs (85-1003 and 86-1003) contain incorrect issuance dates. She explained that she worked on both LOFs and she is certain that the LOFs were not signed or issued on the dates appearing at the top of the LOFs. She does not know the circumstances concerning the placement of dates on these LOFs.

She has never directed anyone to backdate an LOF. She has never directed anyone to delete the typing date appearing on an LOF.

She has never directed an EOS to encourage a complainant to withdraw a complaint. It is her understanding that in the Quincy School District case the complainant initiated the complaint withdrawal.

10/21/86; 10/21/86; dap; 86-000290

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[illegible]

COUNTY OF SUFFOLK   SS.   BOSTON, MASSACHUSETTS
STATE OF MASSACHUSETTS   SEPTEMBER 29, 1986

I, Marcella E. Huff, being first duly sworn, hereby state as follows:

1. I have no evidence of any backdating of LOFs. I do remember one case in which the LOF may have been issued on a date subsequent to the date appearing on the LOF. On complaint # 85-1003 I recall that on November 8, 1985 another employee and ~~I~~ worked on the LOF until approximately 6:45 P.M. The LOF was complete with the exception of attorney signature and Regional Director signature. Because ~~[illegible]~~ the attorney ~~and~~ ~~the Regional Director~~ had left for the day, the LOF was not issued on November 8, 1985. Recently I discovered that the issue date appearing on the LOF was November 8, 1985. I do not know the circumstances concerning the placement of the November 8, 1985 date on the LOF.

MEH

In another case, (#86-1003-Howard) the LOF due date was February 19, 1986. I recall that I worked on the LOF beyond the February 19, 1986 due date. ~~Recently~~ I later noticed that the LOF was dated ~~the~~ February 19, 1986. I do not know the circumstances concerning the placement of the February 19, 1986 date on the LOF.

MEH

1B2

MEH 9-27-86

2. I have never instructed anyone in OCR to backdate on LOF.

3. I have never instructed a typist or anyone in OCR to delete the typing date on an LOF.

4. With respect to the Quincy School District case, I was informed by the EOS, Vivian Bell, that she had received a telephone call from the complainant's attorney and that the attorney had indicated that the complainant wanted to withdraw the complaint.

5. I have never instructed an EOS or anyone else in OCR to contact a complainant and attempt to obtain a withdrawal of ~~the~~ a complaint.

6. I am not aware of any complainants being asked to withdraw complaints because LOF due dates were not expected to be met.

I have read the affidavit consisting of two pages and it is true and correct. I have signed or initialed each page and have been given the opportunity to make any corrections or additions. The ~~statement~~ affidavit is given freely and voluntarily.

9-29-86

9/30/86

2 of 2

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Lawrence D. Humphrey Attorney Office for Civil Rights Region I
DATE OF INTERVIEW:	August 11, 1986
PLACE OF INTERVIEW:	IG Office, Boston, MA
INTERVIEWED BY:	J.B. Taylor, Kenneth F. Crossen Special Agents

MR. HUMPHREY has been an OCR Attorney in Boston since October, 1985. Prior to that time he was not employed by ED. He was interviewed regarding his knowledge of allegations that Letters of Finding (LOFs) and Letters of Acknowledgement (LOAs) issued by OCR, Region I, are being backdated. During the interview MR. HUMPHREY furnished the following information:

1. His duties include reviewing LOAs and LOFs. The review process normally follows a pattern which begins with the Equal Opportunity Specialist (EOS); to his Branch Chief; to an Attorney to the Chief Attorney; to a Division Director; to the Regional Director for signature, and finally back to the appropriate branch for dating, copying and mailing.

2. When an LOA or LOF is received in the Legal Section it is accompanied by a cover sheet submitted by the EOS which shows the Adams due date. The Legal Technician enters the date the item was received in the legal section on this form as well as the date it was returned. HUMPHREY said he always placed the actual date of review on the cover sheet but when he initialed the tissue copy of the report he did not date it if it was after the Adams due date. HUMPHREY advised he did not date the copies as he did not want to be part of any backdating.

3. He has heard rumors in the office regarding backdating and feels it is probably a matter of common knowledge in OCR as he had discussed it with Investigators and the

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OIG-001

other OCR Attorneys. He stated that he, BRENDA WOLFF and LOA BLISS had discussed initialing but not dating LOAs and LOFs which were past the Adams due date. He stated he believes each followed this policy.

4. LOAs and LOFs are not dated when he reviews them. He has not checked to see what date finally is placed on the letter. HUMPHREY cited one instance in which LOU SIMONINI attempted to have him sign off on a letter which he had not reviewed. HUMPHREY refused. SIMONINI told then Regional Director MCCANN who asked him why he wouldn't sign off. When he told MCCANN he had not read it, MCCANN said o.k.

5. HUMPHREY advised he has not discussed the backdating with MCCANN, BUCCI, SIMONINI or RANDOLPH. He stated that SIMONINI is the only one who has pressured him. He feels SIMONINI's only concern is meeting the Adams due dates and that SIMONINI is not concerned with quality.

6. HUMPHREY stated he knew that he would be falsifying records if he incorrectly dated the documents so he did not put a date next to his initials. He felt that by doing this he was certifying only that he had reviewed the document, not when. He advised that to put an accurate date of review by his initials on the copy would have "created a lot of problems".

OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED: Robert J. Hurley
Equal Opportunity Specialist
Program Review and Management Support Staff
Office for Civil Rights
Region I

DATE OF INTERVIEW: August 13, 1986

PLACE OF INTERVIEW: IG Office, Boston, Massachusetts

INTERVIEWED BY: J.H. Taylor, Kenneth F. Crossen
Special Agents

MR. HURLEY has been employed by ED since its inception. He was employed by the former Department of Health, Education and Welfare from February of 1979 until ED's inception. During this time he has held a position as an Equal Opportunity Specialist in the Office for Civil Rights.

1. HURLEY's duties consist primarily of the processing of complaints received by OCR. His specific responsibilities include drafting Letters of Acknowledgement (LOAs). Once a complaint received by OCR is considered complete a LOA must be drafted, signed and mailed within 15 days of the date the complaint was complete. The LOA is mailed to the complainant and the person or institution addressed in the complaint.

2. HURLEY stated that all LOAs must be approved by the Legal Department in OCR. He drafts the LOA and sends it to Legal for approval. Once Legal approves the LOA it is returned to PRMSS for signature. HURLEY indicated that LOU MEYI signs all LOAs.

3. HURLEY stated that both he and MEYI date the LOAs. He indicated that the dates he puts on letters are sometimes typed and other times handwritten.

4. HURLEY stated he had never backdated an LOA. He also stated he had never been told to put an incorrect date on a LOA and was not aware of any LOAs being backdated. HURLEY admitted that letters have been sent out without obtaining written Legal approval, but stated in most of these instances LOU MEYI had spoken to Legal and obtained their verbal approval. HURLEY stated he could not recall ever missing a due date on a LOA.

9/3/86; 9/5/86; dap; 86-000290

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OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Cecilia L. Lake Secretary, Elementary and Secondary Education OCR, Region I
DATE OF INTERVIEW:	August 12, 1986
PLACE OF INTERVIEW:	IG Office, Boston, MA
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MS. LAKE has been employed by OCR, Boston, MA since March 1977. She was interviewed regarding her knowledge of alleged backdating of Letters of Finding (LOFs) and Letters of Acknowledgement (LOAs) issued by OCR, Region I. During the interview she furnished the following information:

1. Her duties include timekeeping, the preparation of travel vouchers and typing reports. She stated she spends a lot of her time typing LOFs. She advised LOFs often are retyped several times due to modifications, corrections, etc.

2. LOFs are not dated until they have completed the review process and been signed by the Regional Director. After signature they are returned for dating and mailing.

3. She stated that sometimes she has been told to backdate LOFs. She feels the reason LOFs are backdated is to show they complied with the Adams rule regarding time frames. LOFs are sometimes late because a particular employee is away from the office, a shortage of typists, etc. She has been instructed to put a particular date on an LOF which had been typed by someone else.

4. LAKE stated she specifically recalled that LOU SIMONINI, Division Director, Elementary and Secondary Education has instructed her to backdate LOFs. She advised others may have also, but she was not able to specifically recall any other individuals.

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5. MS. LAKE stated that backdating to meet Adams due dates is common knowledge among Region I OCR employees. In her opinion anyone who is not aware of this practice would have to be a relatively new employee.

OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

Person Interviewed: James M. LITTLEJOHN
Director, Policy Development Division
Office for Civil Rights (OCR)

Interviewed By: J. H. Taylor
Special Agent

Date of Interview: October 1, 1986

Place of Interview: IG Office, Washington, D. C.

Mr. LITTLEJOHN was interviewed to determine if he had discussed the backdating of Letters of Finding (LOF's) with any Region I OCR employees in late 1985 or early 1986. Mr. LITTLEJOHN stated he has not been contacted by any Region I OCR employees regarding backdating LOF's) He denied telling anyone that backdating is done by everyone.

86-000290 SA J.H.TAYLOR 10/1/86 vld

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U.S. DEPARTMENT OF EDUCATION

RICHARD V. MCCANN, 9 Billings Park, Newton, Massachusetts was interviewed at the Office of Inspector General, Boston on August 20, 1986 by Special Agents Gary E. Mathison and Kathryn F. Baziuk. MCCANN provided the following information:

MCCANN advised that he served as Regional Director of OCR, Boston from April, 1982 until his retirement on July 3, 1986. As Regional Director he directly supervised FRANK BUCCI, the Assistant Regional Director; the Regional Director's Secretary, ALI (last name not recalled by MCCANN); the Divisional Directors of PRMSS, Elementary and Secondary Education, and Postsecondary Education; and, the Chief Civil Rights Attorney, LOA BLISS.

MCCANN stated that he was not directly involved in the issuance of acknowledgement/notification letters to complainants and alleged discriminating agencies. This function was the responsibility of PRMSS and its Director, LOUIS MEYI. MCCANN believes that it was OCR procedure for PRMSS to obtain Attorney Division approval and clearance prior to the issuance of acknowledgement and notification letters. This clearance was necessary since it was the Attorney Division's responsibility to determine jurisdiction of the complaint.

MCCANN advised that he was not part of the approval process in the issuance of PRMSS notification/acknowledgement letters and merely received copies of the letters subsequent to their issuance. He advised that he has no knowledge of any alleged backdating of acknowledgement/notification letters.

With respect to the drafting and issuance of LOFs, MCCANN advised that after completion of an investigation, the assigned EOS would draft an LOF. The draft would then be submitted to the branch chief for review and comments. The branch chief would then submit the draft to the Attorney Division where an attorney would review the LOF and suggest modifications to make the LOF a legally sufficient document. Attorney Division review was always conducted prior to the issuance of an LOF. During a period of time in 1984, however, there were no attorneys in OCR, Boston and LOFs were issued without attorney review.

08/25/86; 08/26/86; dap; 86-000290

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MCCANN advised that subsequent to Attorney Division review, the responsible branch or divisional secretary would type the LOF in proposed final form and submit the LOF to him (MCCANN) for his signature. The LOF so submitted to MCCANN would be undated and would contain the appropriate number of carbon copies. Included would be the yellow carbon copy which contained the approval initials of the EOS, Branch Chief, Division Chief, Attorney, and Chief Attorney. Prior to signing the LOF MCCANN would review the yellow carbon copy to make certain that the appropriate approvals and initialing had been completed.

After signing the LOF, it would be returned to the branch or division for final processing which included dating, copying and mailing the LOF. MCCANN stated that he did not see the final dated versions of the LOFs but acknowledged that copies of such were placed in the Regional Director's reading file.

The Interviewers showed MCCANN a folder/log entitled "RD's Signature Log" ostensibly indicating dates on which various documentation was received, signed and released by the Regional Director. MCCANN examined this log and commented that he had previously not seen the log and did not know of its existence. He was unable to interpret the entries appearing thereon and was unable, based on the handwriting, to determine the author of the log.

MCCANN stated that while serving as Regional Director there were two circumstances under which LOFs were backdated. He explained that the first circumstance took place during the Spring of 1985 when a "cluster" of LOFs were prepared, typed and signed on a Sunday. At MCCANN's direction each of the LOFs signed on the Sunday were backdated to the previous Saturday or Friday. MCCANN so directed this backdating because he determined that it may not have been legally sufficient for a letter to contain a Sunday date of issue.

MCCANN stated that the second circumstance of backdating LOFs took place on occasions when there was a shortage of clerical staff. He explained that on occasion LOFs were prepared and ready for final typing but because of a shortage of typists the LOFs were typed the following day. On these occasions he sanctioned his employees to backdate the LOFs to the date on which they were ready for final typing. He explained that such LOFs were never backdated more than one business day. MCCANN commented that in his opinion the condition caused by the shortage of clerical staff legitimized the backdating.

He stated that he did not receive OCR Headquarters approval for this backdating but that discussion of the activity was held with Headquarters personnel and no objections were raised. He was unable to recall the identities of the Headquarters employees with whom he discussed the backdating.

MCCANN advised that the backdating caused by a shortage of clerical staff was not a common occurrence. He could not provide an estimate as to how many LOFs were backdated.

MCCANN could not recall any other instances of backdating LOFs. He does not recall receiving any complaints from LOA BLISS or any other OCR employee regarding backdating of LOFs.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Paul McManus
DATE OF INTERVIEW:	August 13, 1986
PLACE OF INTERVIEW:	IG Office, Boston, Massachusetts
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MR. MCMANUS was interviewed regarding his knowledge of Adams Order Violations allegedly occurring in the Region I OCR office. During the interview he provided the following information:

1. He is no longer employed by the Federal Government. Prior to his departure he had worked for the Government for approximately nine years. He served as a Branch Chief in the Elementary and Secondary Education Division of OCR in Region I.

2. MCMANUS stated the backdating of LOF's was common knowledge in the Region I office. While her served as Branch Chief only one LOF was issued by his branch. He stated this LOF was backdated at the insistence of LOU SIMONINI, his supervisor. This related to case #01-86-1008, Lakin vs. Kittery, Maine School District.

3. MCMANUS stated he received the Lakin LOF from ETHEL SHEPARD-POWELL, the Equal Opportunity Specialist who had investigated the case. POWELL had initialed and accurately dated the tissue copy of the LOF prior to presenting it to MCMANUS. MCMANUS then also initialed and accurately dated the tissue copy. The Adams due date had already expired as of the date of their signatures. However, several days later after the LOF had been submitted through proper channels, LOU SIMONINI approached MCMANUS and POWELL and asked "What is this?" referring to the dates contained on the LOF. After discussion SIMONINI told them to have the page which contained their initials and dates re-typed, then reinitial it and date it to show the LOF was issued before the Adams due date had expired. MCMANUS stated the page was re-typed and he initialed and improperly

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03/08/86; 09/09/86; dap; 86-000290

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dated it per SIMONINI's instructions and then told POWELL to do the same. MCMANUS stated he also told POWELL to keep the tissue copy containing the accurate date of their original signature. To the best of his knowledge he believed POWELL still had the tissue copy.

4. MCMANUS had no other knowledge regarding allegations of backdating LOF's in the Region I OCR office.

OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

LOUIS H. MEYI, Director Program Review and Management Support Staff (PRMSS) for the Boston Office of Civil Rights (OCR) was interviewed at the Office of Investigations, Boston on July 21, 1986 by Special Agents John Taylor and David Tobin. At the outset of the interview MEYI was advised of the identity of the interviewers and the nature and purpose of the interview. MEYI provided the following information in substance:

MEYI stated that he has held the position of Director for PRMSS since May 1980 and has been employed by the Government since August 16, 1971. MEYI was asked if the PRMSS section of OCR had the responsibility of logging in the mail, specifically complaint letters involving civil rights issues. MEYI stated that PRMSS did have that responsibility. MEYI was asked the name of the individual who actually logged in the mail. MEYI stated that CECELIA HARRIS was the primary person but CAROLYN LAZARIS, DENNIS RITENOUR, ROBERT HURLEY, STEPHEN CROWLEY and himself (MEYI) logged in the mail on occasion. MEYI advised that he and the aforementioned PRMSS employees have maintained the complaint log since May, 1985. From 1983 until May, 1985 BEVERLY LONG, a part-time OCR employee, maintained the log.

MEYI was asked to describe the administrative procedure followed by PRMSS upon receipt of a civil rights complaint. MEYI stated that complaint is logged in on the day in which it is received except when MEYI determines that other office duties take priority. MEYI explained that PRMSS has a large volume of work and because of the workload, it is not always feasible to log in the mail on the day that it is received. MEYI stated that PRMSS maintains a log of all the incoming mail and the log contains the dates of the complaint letters and dates that the letters were received at PRMSS. MEYI further stated that mail is often delayed in reaching the PRMSS/OCR office because of weekends and because it is sometimes delivered to the 5th floor offices of DOE.

MEYI was asked to highlight the remaining primary functions of the PRMSS section. He stated that the PRMSS section handled most of the outgoing administrative "central office correspondence" as well as "data management" and "intake processing". MEYI stated that the data management process consisted of PRMSS identifying and adhering to the time intervals set forth within the quality assurance standards for OCR's investigative activity. MEYI further stated that

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the intake processing activities were primarily handled by ROBERT HURLEY and THERESA JERALDI of PRMSS. MEYI stated that the this actually consisted of the employees (HURLEY and JERALDI) reviewing the complaint's for substance and identifying the applicable OCR regulations. MEYI further stated that the PRMSS unit also provides the Region I OCR office with technical assistance.

MEYI was asked if he had knowledge of any OCR employees intentionally altering the dates pertaining to the receipt of civil rights complaints. MEYI stated that he had no such knowledge. MEYI stated that he was not comfortable with the Interviewers' use of the word "intentional". He explained that a civil rights complaint may not get logged in on the day in which it is received at PRMSS. He stated that this would probably be the result of office priorities as opposed to any intentional manipulation. The interviewer explained to MEYI that the question was relatively specific and he was again asked if he had knowledge of any OCR employee manipulating the date structure surrounding the receipt of a civil rights complaint; specifically, forward-dating the receipt of a civil rights complaint. MEYI stated that he had no such knowledge.

U.S. DEPARTMENT OF EDUCATION

LOUIS H. MEYI, Director, Program Review and Management Support Staff (PRMSS) Office for Civil Rights, U.S. Department of Education was interviewed at the OIG offices, Boston, Massachusetts on August 14, 1986 by Special Agents John H. Taylor and Gary E. Mathison. MEYI provided the following information in substance:

MEYI advised that the PRMSS Division is responsible for determining whether a discrimination complaint received by OCR is complete and whether or not the complaint falls within the jurisdiction of OCR. Within 15 days of receipt of the complaint, PRMSS is required to send notification letters to the complainant and the institution named in the complaint.

MEYI advised that on occasion PRMSS notification letters, although dated on or before the 15th day, have actually been mailed by PRMSS subsequent to the date appearing on the letter. He explained that this has occurred because his employees work on a flex-time schedule and on occasion letters are typed and dated in their absence and it is not until the following day when the employees report back to work that the letters are photocopied and mailed.

The Interviewers advised Meyi that review of a sample of OCR files revealed several instances where it appeared that the PRMSS acknowledgement/notification letters had been backdated. MEYI was advised that in each case, the files indicated that the OCR Attorney Division signed-off and cleared the release of the letters on dates subsequent to the dates appearing on the letters.

MEYI stated that the aforementioned finding was not the result of backdating. He advised that on occasion he determines that the letters are legally sufficient and issues and mails the letters prior to Attorney Division clearance. He explained that he is responsible for meeting the 15 day timeframe and it has been his experience that if he awaited Attorney Division clearance prior to issuance of the letters, he would often fail to meet the 15 day requirement. He stated that he believes that each of the letters cited by the Interviewers was issued on the date represented on the letters and that Attorney Division clearance was obtained subsequent to the issuance dates of the letters.

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08/15/86; 08/18/86;/dap; 86-000290

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The Interviewers asked MEYI why PRMSS would send a letter to the Attorney Division for clearance if the letter had already been issued. MEYI advised that the Investigative Procedures Manual (IPM) requires submission to the Attorney Division and that the attorney's comments regarding the letters are of value to the assigned EOS.

MEYI was shown documents relating to case #01-86-1019 (Lakin v. Maine Department of Education and Cultural Services). Specifically, he was shown acknowledgement and notification letters dated April 24, 1986 and an Attorney Division Transmittal form indicating submission of the letters to the Attorney Division on April 24, 1986 and return of the letters by the Attorney Division on April 25, 1986. MEYI reviewed the documents and the entire case file and acknowledged that the modifications suggested by the Attorney Division appeared on the notification and acknowledgement letters. MEYI was unable to explain the discrepancy between the date of the letters and the date of return appearing on the Attorney Division transmittal sheet.

OFFICE OF [illegible]
U.S. DEPARTMENT OF EDUCATION

RALPH MONTALVO, EOS, Postsecondary Education Division, OCR, Boston, Massachusetts was interviewed on September 22, 1986 by Special Agent Gary E. Mathison and Investigative Assistant Doreen Pulos. MONTALVO provided the following information in substance:

He has been employed by OCR, Boston since October 19, 1980.

From conversations he has overheard it is his understanding that some LOFs were backdated during the Spring of 1985. He explained that during that time period the OCR division supervisors were under a "crunch" directive to close-out several old cases. He overheard that some LOFs were backdated to meet certain deadlines.

MONTALVO also suspects that an LOF issued on one of his cases was backdated. He stated that he worked on the Massachusetts College of Art complaint (#01-85-2017) and that he is certain that the LOF was issued no earlier than December 20, 1985. After the LOF was issued he wrote in a weekly status report in which he stated that the LOF was issued on December 20, 1985. He was later contacted by his Supervisors, WALTER PATTERSON and ROBERT RANDOLPH, and PRMSS Director LOU MEYI and was told by them that the issue date appearing on the LOF was December 19, 1985. MEYI, PATTERSON and RANDOLPH were concerned that the LOF date cited on the weekly report did not match the LOF issue date. MONTALVO thereupon became aware that the LOF may have been backdated. MONTALVO does not know who may have directed the backdating of the LOF.

MONTALVO stated that in late, 1985 he sent a handwritten memorandum to OCR Regional Director RICHARD MCCANN identifying various grievances. MONTALVO believes that in this memo he may have alerted MCCANN to his (MONTALVO's) suspicions that LOFs may have been backdated.

09/22/86; 09/22/86; dap; 86-000290

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OIG-301

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

On October 2, 1986 RALPH MONTALVO, EOS, Office for Civil Rights, Boston, presented Special Agent Gary E. Mathison with a photocopy of a December 18, 1985 letter addressed to Dr. MCCANN. MONTALVO advised that on or about December 18, 1985 he hand-delivered this letter directly to Dr. MCCANN. MONTALVO assumes that MCCANN read subject letter but could not be certain since he did not have a conversation with MCCANN concerning its contents. MONTALVO does not know where the original copy of the letter was ultimately filed.

10/22/86; 10/23/86; dap

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Dec. 10, 1985

Dear Dr McCann:

Thank you for meeting with me yesterday. I truly appreciate the opportunity to once again express the [illegible] belief which I hold with respect to mgmt's arbitrary and discriminatory action regarding my GPAS evaluation.

Please be advised that I have taken or I am contemplating the following action.

With regard to my Privacy Act charges, I have spoken with Mr Robert Gray of the I.G.'s office in Washington and he is of the opinion that the facts as I presented them are grievable and, indeed, support a prima facie violation of the standards of conduct. I am sharing this information with you because when we met yesterday you indicated to me that you were taking notes to seek out your own information. You may if you wish (RHM 1/2/86

(4)

Call Mr. Gray for further information, his number is FTS - 453-4051

Also, in a previous conversation with I.G., I was asked whether I believed there were programmatic violations. I told him that I didn't know but would call him back if I found out different.

Since then, I have thought about the office practice of backdating documents such as LOF's etc. I believe that this may constitute a falsification of government records.

I know that making such a charge would seriously effect many people in DCE and may even jeopardize their government career. However, I believe that mgmt's ~~of~~ arbitrary and discriminatory downgrading of my GPPB evaluation has also seriously affected me and may have even placed my desire of a government career in jeopardy.

I am truly sorry that it has come to this but your lack of affirmative action to correct the obvious wrong committed by your Deputy Director leaves me no other choice.

Thank you
Ralph D. Montello

cc/ file

P.S. My beliefs that backdating of documents constitutes a falsification of government records may be wrong. I welcome any explanation which you may have on this practice.

(RAM)

RAM 10/2/86

OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Rance O'Quinn Equal Opportunity Specialist (EOS) Office for Civil Rights, Region I
DATE OF INTERVIEW:	July 22, 1986
PLACE OF INTERVIEW:	IG Office, Boston, MA
INTERVIEWED BY:	J.H. Taylor, David Tobin Special Agents

On July 22, 1986 MR. O'QUINN requested an interview and arrangements were made for him to speak with Special Agents Tobin and Taylor. MR. O'QUINN advised that late in the afternoon on July 21, 1986 LOA BLISS, Acting Regional Director, OCR, Region I, telephoned and asked him to furnish her copies of documents he had sent to the Hotline. He stated she also asked him to tell her what he told the Inspector General's Office. O'QUINN advised he neither confirmed nor denied contacting the Inspector General's Office verbally or in writing.

MR. O'QUINN advised he did make a Hotline complaint regarding backdating. He expressed concern that OCR management may retaliate against him and asked what rights he had. We advised MR. O'QUINN that the "Whistle Blower Statute" prohibits retaliation against employees for reporting improper or illegal activities. MR. O'QUINN was advised to make a written record of the conversation and contact the IG's office if he felt he was experiencing retaliation for furnishing a complaint to the Hotline. MR. O'QUINN agreed.

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OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

RANCE O'QUINN, EOS, Elementary and Secondary Education Division, OCR, Boston was interviewed on August 26, 1986 by Special Agents Gary E. Mathison and Kathryn F. Baziuk. O'QUINN provided the following information in substance:

He has been employed as an EOS within the Elementary and Secondary Education Division of OCR, Boston since October, 1980. Since October, 1984 he has served as President, AFGE Local 3893.

As AFGE Local 3893 President he has received complaints from bargaining unit employees concerning the manner in which OCR supervisors (Branch and Division Chiefs) have been processing LOFs. In particular, various employees have complained to him that OCR supervisors have been able to manipulate their (the Supervisor's) performance ratings through the backdating of LOFs. He explained that Division Chiefs and Branch Chiefs have as part of their merit pay performance agreements, a requirement to meet the Adams Decision time frames. The complaining employees told O'QUINN that it was their opinion that Elementary and Secondary Education Division Director LOUIS SIMONINI was the supervisory employee most responsible for the alleged backdating.

O'QUINN stated that often times an LOF due date is missed and that in such situations the Supervisors instruct clerical employees to backdate the LOFs so that the Adams timeframes appear to have been met and so the Supervisors meet their merit pay standards.

O'QUINN advised that aside from the examples of backdating presented to him by OCR employees, he too has direct knowledge of a backdating incident. He advised that a case (DeMello v. Greater New Bedford Vocational Technical School) that he worked on resulted in the issuance of a backdated LOF. He explained that the LOF in this case was signed on one date and backdated one day to coincide with the Adams due date. With respect to this case, O'QUINN learned from former Branch Chief PAUL MCMANUS that SIMONINI directed MCMANUS to have the typist backdate the LOF.

08/27/86; 08/27/86; dap; 86-000290

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O'QUINN also learned from MCMANUS that a "Lakian" complaint LOF was directed by SIMONINI to be backdated. It is his (O'QUINN's) understanding that this LOF was backdated several days.

O'QUINN stated that OCR Attorney BRENDA WOLFF had informed him that the Attorney Division was aware that LOFs were often backdated and that the Attorneys and the Chief Civil Rights Attorney, LOA BLISS, had determined the backdating to be unethical and as such, they refused to place dates next to their approving initials.

O'QUINN stated that on one occasion SIMONINI, through MCMANUS, requested him (O'QUINN) to contact a complainant and attempt to have the complainant agree to withdraw a complaint. O'QUINN advised that the purported reason for making this contact with the complainant was based upon the fact that the complainant had moved away from the school district named in the complaint. It is O'QUINN's opinion that SIMONINI had directed the contact with the complainant because the Adams due date was approaching and there was no possibility of issuing a timely LOF.

From discussions with EOS VIVIAN BELL, O'QUINN has learned that she may have similarly been asked by OCR supervisors to attempt to obtain complaint withdrawals because of approaching Adams due dates.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Walter A. Patterson Branch Chief, Postsecondary Education OCR, Region I
DATE OF INTERVIEW:	August 12, 1986
PLACE OF INTERVIEW:	IG Office, Boston, MA
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MR. PATTERSON has held his current position since November 1985. He has been employed by ED (and previously HEW) since 1972. He was interviewed regarding his knowledge of alleged backdating of Letters of Finding (LOFs) and Letters of Acknowledgement (LOAs) issued by OCR, Region I. During the interview MR. PATTERSON furnished the following information:

1. His duties include the review of LOFs prepared by Equal Opportunity Specialists (EOS) in his branch. When he reviews an LOF, he initials a copy and places the actual date he reviewed it next to his initials.

2. He could not recall ever being instructed to backdate an LOF or the date by his initials. He stated he has never asked a secretary or anyone else to backdate.

3. He has heard rumors of backdating but could not cite any specifics. He felt it could have happened if no typist was available late in the day, and an LOF was typed the following day.

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OIG-381

OFFICE OF INSPECTOR GENERAL
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U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Julie E. Perrier Secretary Office for Civil Rights Region I
DATE OF INTERVIEW:	August 11, 1986
PLACE OF INTERVIEW:	IG Office, Boston, MA
INTERVIEWED BY:	J.H. Taylor, Kenneth F. Crossen Special Agents

MS. PERRIER has been employed by ED as a Secretary, Post-Secondary Education Division, OCR, Boston, Massachusetts since March, 1986. PERRIER was interviewed to obtain information regarding alleged backdating of Letters of Finding (LOFs) and Letters of Acknowledgement (LOAs). During the interview she furnished the following information:

1. WALTER PATTERSON is her immediate supervisor and BARBARA WILSON is her Division Director. Her duties consist primarily of typing LOF's, Investigative Reports and Investigative Plans.

2. PERIER stated that the majority of her work consists of typing and dating LOF's, which normally are given to her by the Regional Director's secretary or one of the Branch Chiefs. She believes that in the majority of cases either BARBARA WILSON or the responsible Equal Opportunity Specialist tells her what date to put on the LOF. PERRIER indicated that WALTER PATTERSON has never requested her to backdate any document.

3. PERRIER recalled that when she was first asked to backdate it was explained to her that the document was supposed to have already gone out and backdating the document was no problem. PERRIER did not know who provided this explanation but she assumed that the rationale behind backdating must have emanated from the Regional Director's office.

4. PERRIER also recalled that there were many instances when she worked overtime in order to type LOF's in which RICHARD MCCANN, ROBERT RANDOLPH and BARBARA WILSON were

rac
9/3/86; 9/5/86; dap; 86-000290

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all present and aware that the LOF was backdated. She was not sure who initiated the backdating request during these instances but was positive that all three individuals knew of the backdating. PERRIER admitted that the backdating practice was common knowledge in the office. PERRIER acknowledged that if she backdated the LOF she also backdated all other correspondence (carbons, typing acknowledgements) associated with the LOF. She also admitted that the first late LOF she ever typed was backdated as have all other late LOFs.

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ROBERT R. RANDOLPH, Supervisory Equal Opportunity Specialist for the Office of Civil Rights (OCR) was interviewed at his residence, 96 Hazelton Street, Dorchester, Massachusetts on July 15, 1986 by Special Agents John Taylor and David Tobin.

At the outset of the interview RANDOLPH was advised of the identity of the Interviewers and nature of the proposed questioning. RANDOLPH was advised of his rights by S/A Taylor and provided with OI Form 310 (Warning and Waiver of Rights) which he signed acknowledging that he understood his rights.

RANDOLPH advised the interviewers that he did not wish to waive his rights and that he was not willing to discuss anything without his attorney being present.

The interviewers complied with RANDOLPH's request and discontinued the meeting without initiating any questioning.

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PERSON INTERVIEWED: Ethel Shepard-Powell
Equal Opportunity Specialist (EOS)
Office for Civil Rights
Region I

DATE OF INTERVIEW: August 13, 1986

PLACE OF INTERVIEW: IG Office, Boston, MA

INTERVIEWED BY: J.H. Taylor, Kenneth F. Crossen
Special Agents

MS. POWELL has held her current position since November 1985. She has been employed by ED (or HEW) since September 1966. She was interviewed regarding her knowledge of allegations that LOFs and LOAs issued by OCR Boston are being backdated. During the interview she provided the following information:

1. Since November 1985 she has prepared only one LOF. It related to case number 01-861008, Lakin vs. Kittery, Maine School District.

2. MS. POWELL advised that she initially reviewed the LOF and initialed and accurately dated the tissue copy before giving it to her Branch Chief (PAUL MCMANUS) who also initialed and accurately dated the tissue copy. The Adams due date had already passed.

3. Several days later LOU SIMONINI, Division Director, Elementary and Secondary Division, approached her and PAUL MCMANUS, pointed out the dates on the copy and said "What's this?" After a discussion he told them to have the page which contained the initials and dates reprinted, re-initial it and date it to show it was initialed before the Adams due date had expired. She stated the page was reprinted, MCMANUS initialed and redated the copy per SIMONINI's instructions and told her to do the same, which she did.

4. MCMANUS told her to keep the original, correctly dated copy which she did. At our request, MS. POWELL retrieved it from her office, and furnished it to us. A copy of this sheet is attached.

5. MS. POWELL stated she felt SIMONINI was perturbed about this and expected the LOF to have already been backdated.

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OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

Person Interviewed: Louis F. Simonini
Division Director
Elementary and Secondary
Education (E&SE)
OCR, Region I

Interviewed By: J. H. Taylor, Kenneth F. Crossen
Special Agents

Date of Interview: August 13, 1986

Place of Interview: IG Office, Boston, MA

Mr. SIMONINI has held his current position since February, 1985. He was interviewed regarding allegations that Letters of Finding (LOFs) and Letters of Acknowledgement (LOASs) were being backdated. During the interview SIMONINI furnished the following information:

1. He is aware that on approximately 3 or 4 occasions LOF's were backdated one day working day. SIMONINI stated this occurred when the LOF had been reviewed by all appropriate individuals and minor corrections (i.e., spelling, punctuation, word usage) had to be made before issuance and no typist was available. He stated the corrections would be made the following day, dated the previous workday (if that was the Adams due date), signed and sent. Mr. SIMONINI stated that had the investigation not been complete by the Adams due date the LOF would not have been backdated. He stated the primary reason certain LOF's were not issued by the Adams due date was because of a shortage of typists. He told us that with one exception we should not be able to find LOF's backdated more than one day.

2. He recalled an LOF prepared by Walker CARTER which was backdated several days. He stated that then REgional Director, OCR, MCCANN made the decision to backdate the LOF. He was unable to recall who told the typist what date to put on the LOF.

3. SIMONINI stated that when he became Division Director of E&SE (2/85) he was given an impossible task. He advised that of approximately 10 Equal Opportunity Specialists (EOS's) in that Division, only three are functional.

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OIG-301

He advised that prior to the time he took over as Director of the E&SE Division no LOFs had met any Adam's due date other than those cases that were withdrawn or closed with no investigative work performed.

4. In late 1984 or early 1985 he was present with OCR Regional Director MCCANN during a conference call made to OCR REgional Directors by Harry SINGLETON, then Assistant Secretary, OCR. During the call SINGLETON stated he was concerned by the number of missed Adams due dates, especially those missed by one or two days. SIMONINI said SINGLETON told them to use their imagination and be innovated in finding ways not to miss Adams due dates. SIMONINI said SINGLETON told them to use interrupts and other resources to meet time frames. In December 1984 MCCANN issued a memo to Region I employees telling them to accomplish work within time frames.

5. According to SIMONINI in approximately March 1985 MCCANN was told to straighten out the work by 6/85 or his job would be in jeopardy. In approximately 12/84 there had been a deliberate attempt to manage the office whose employees are totally incompent and illiterate. At approximately this time a decision was made that Region I would meet their time frames and not be the whipping boy of the nation again. SIMONINI stated that at that time there were piles of old complaints on hand which had missed the Adams date by months and years. SIMONINI stated that MCCANN was on a remedial workplan during at least a portion of the last two years and expressed his desire to meet the Adams dates, but did not directly pressure him.

6. SIMONINI defined backdating of an LOF as the intentional placing of a past date on an LOF for which no finding was determined for several days after the LOF was supposed to go out. He stated there had been 2 or 3 occasions where they were under pressure due to Attorneys and they backdated but he advised he had signed off on what he considered the final product before the due date. SIMONINI stated he feels the due date is met once the report is written no matter what further delays are encountered.

7. SIMONINI stated the only times he could recall telling a typist to backdate an LOF were on occasions when minor changes were made late in the day and the final LOF was retyped and signed the following working day. Mr. SIMONINI could not recall telling a typist to dackdate an LOF.

8. He stated that when he reviewed LOF's he initialled and dated a copy on the date of his review. This date was accurate except when the LOF was backdated by a working day his initial date was also backdated.

9. He stated he has not discussed backdating with OCR Headquarters Personnel.

10. A handwritten, sworn statement voluntarily furnished by SIMONINI at the conclusion of this interview is attached

State of Massachusetts : SS
County of Suffolk :

I, [illegible], being first duly sworn, do depose and state that:

I am the Director of El & Sec. Ed. + have been since Feb, 1985. I have been employ by OCR since 1978. Beginning in Nov. or Dec. of 1984, when I was still a Branch Ch. in PSE the office began to focus more heavily on meeting Adams time frames. At about that time Mr. Singleton, the asst Sec. of Ed for OCR, made statements on the friday conference call that he was disturbed by the missing of Adams dates, esp. those missed by ~~only~~ a few days + telling R.D.s to become ~~[illegible]~~ innovative in the use of interrupts +/or ways of meeting Adams due dates.

AHB 8/13/86

A memo concerning interrupts came out in Dec, 1784 from Ms. McCann + from then on every case was carefully examined for possible interrupt. Attempts were also made to track case closely to attempt to make Adams. I, personally, was, while in PSE not too involved since for several years I had had close adherence to Adams. In Feb, 1985 I became Div. Dir. in E+S. The situation I inherited was abominable. The records showed that not one investigated closure had met

(2)

the Adams LOF date. The only Adams LOF "mets" were for withdrawal &/or administrative closures.

Also, I was informed by Ms. McCann that the Region was under direction to get all of the backlogged cases that had missed Adams over the several previous years closed by June 30, 1985. -

The Division, [illegible] 8/13/86 [redacted] by July of 1985, accomplished the task set by McCann. However several persons were identified as not being competent to perform the position they held. Three persons were ultimately put on Remedial Action Plans & a wide variety of innovative techniques were developed to keep the work flowing. For the most part these techniques proved very successful.

Another major problem facing the Division was an acute shortage of typists 3/11 Until ~~the last~~ few weeks only one typist was [illegible] 8/13/86 [redacted] assigned the Division. Consequently even products that were completed timely by investigators had difficulty being put in final typed form. This typing problem was compounded by the usual (but occasionally flexible) demand by the Attorney Division that they would only review typed products. -

In this context, on a few, occasions

③

products which were completed timely had to have minor changes made on the due date that occasionally caused these products to be mailed late.

Dr. McCann was consistently concerned with meeting Adams LOF due dates & was the decision maker whenever such an occasion arose. I can only think of a very few occasions when this happened & of only one occasion when ~~of~~ it went ~~beyond~~ (SS 8/13/85) a day or two. In all cases which I can (SS 8/13/85) recall [illegible] the investigations were completed & typed initially (SS 8/13/85) timely. What caused the date to be a day or so (SS 8/13/85) later were nothing more than minor word changes or modifications usually required by the attorney. In only one case, a case of Walker Carter's, do I recall the ultimate dating & mailing to be more than a day or so.

Whenever a case was not complete & agreed to as ready for closing by all in the chain I refused to (SS 8/13/85) process it for closure. This precise thing happened for the 1st time a few months ago with Rance O'Quinn & the office simply missed the date.

On several occasions I heard persons such as [illegible] Montalvo, Rance O'Quinn, Ralph & Nomi

(4)

& others comment derogatorily to either Ms. Bucci &/or Dr. McCann about "backdating". The answer given was that there was no backdating occurring & that the products which were going out were completed on time & needed some minor revisions for which no secretary was available. Consequently they were mailed as soon as a secretary had become available.

LB 8/13/86

[redacted]

Once Letters of Findings were sent to the R.D.'s office for signature & once signed they were sent back to the secretary who had typed the document for dating &/or photostating. I have no recollection of having asked a secretary to backdate a LOF.

Of special note is the fact that my belief has consistently been, following the conference call of either the end of 1984 or the beginning of 1985 that the Ass't Sec, Harry Singleton, wanted LOF & other Adams dates to be met. My reactions to his statements were that he was

(2)

giving specific marching orders to Each Regional Director to make the date at any cost & to use LFS 8/13/86 any & all means available to them to do so. This perception of what the Ass't Secretary wanted became more pronounced after March, 1985 when Dr. McCann returned from the Regional Director's meeting in Washington. Several reporting & tracking systems were put into place which were headed by the Deputy, Ms. Bucci; and clear direction was given that Adams date must be met.

Louis F. Simonini
8/13/86

Subscribed and sworn to before me this the 13th day of August 1986 at Boston, MA.

Special Agent

Kenneth J. [illegible]
Special Agent

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED: Susan Foster Vogt
Secretary to the Regional Director
Office for Civil Rights
Region 1

DATE OF INTERVIEW: August 11, 1986

PLACE OF INTERVIEW: IG Office, Boston, Massachusetts

INTERVIEWED BY: J.H. Taylor, Kenneth F. Crossen
Special Agents

MS. VOGT has been employed by ED as a Secretary, OCR, Boston, Massachusetts since April 28, 1986. VOGT was interviewed to obtain information regarding alleged backdating of Letters of Finding (LOFs). During the interview she furnished the following information:

1. Her duties consist primarily of secretarial work for the Regional Director. She logs in and out all correspondence submitted to the Regional Director. Within the last two weeks she has been assigned the responsibility of dating LOFs after their review by the Regional Director and prior to their return to the Equal Opportunity Specialist (EOS).

2. Prior to the last two weeks she would simply log the LOF out upon its review by the Regional Director and return it to the EOS. The majority of the time she handed the LOF directly to the EOS. It was her understanding that the LOF's were dated by one of the secretaries in the division sections. VOGT stated she had never typed a date on a LOF.

3. VOGT identified the Regional Director's Log in our possession as the log she uses to record all correspondence submitted to the Regional Director. She stated that JULIE HARPER maintained the log prior to her arrival. She also stated that since she has maintained the log she has always put the correct date in the log. Recently, she rewrote the sheets contained in the log in order to present a neater appearance. She destroyed the sheets from the prior log. The majority of the entries in the log were made by her.

KFC
9/3/86; 9/5/86; dap: 86-000290

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4. VOGT stated she was not aware of the alleged backdating problems until most of the files in OCR were taken by the IG about three weeks ago. She has no other knowledge regarding allegations of backdating of LOFs in the Region I OCR office.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED: Susan Foster Vogt
Secretary to the Regional Director
Office for Civil Rights
Region I

DATE OF INTERVIEW: August 14, 1986

PLACE OF INTERVIEW: IG Office, Boston, Massachusetts

INTERVIEWED BY: J.H. Taylor, Kenneth F. Crossen
Special Agents

MS. VOGT has been employed by ED as a Secretary, OCR, Boston, Massachusetts for approximately three and one-half months. VOGT was interviewed to obtain information concerning alleged unofficial business being conducted during government time. During the interview she furnished the following information:

1. She has never performed any typing or other work not related to official ED business during government time or on government premises.

2. VOGT has heard LOU SIMONINI ask JUDY HALPER to do personal typing for him on her own time. She also heard SIMONINI state he would pay HALPER to do this typing. She was not aware of HALPER's response nor did she have any knowledge as to whether HALPER had done the typing.

K2C

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OIG-901

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Barbara A. Wilson Branch Chief, Post-Secondary Education Office for Civil Rights Region I
DATE OF INTERVIEW:	August 12, 1986
PLACE OF INTERVIEW:	IG Office, Boston, Massachusetts
INTERVIEWED BY:	J.H. Taylor, Kenneth P. Crossen Special Agents

MS. WILSON has been employed by ED since its inception in 1978. She was employed by the former Department of Health, Education and Welfare from September of 1966 until ED's inception in 1978.

WILSON was interviewed to obtain information regarding alleged backdating of Letters of Finding (LOFs). During the interview she furnished the following information:

1. WILSON served as Branch Chief of the Elementary and Secondary Education Division in OCR from 1978 until her appointment as Branch Chief of the Post-Secondary Education Division in October of 1983.

2. WILSON admitted that the backdating of LOFs took place in OCR. She also admitted that she was directly involved in the backdating of the LOFs. However, she insisted she was instructed by her supervisors to backdate the documents. WILSON identified RICHARD MCCANN, FRANK BUCCI and ROBERT RANDOLPH as having given her instructions to backdate LOFs. WILSON stated that instructions to backdate were given to her by these individuals both orally and in writing (the majority of the time when the LOF was returned to the Branch after the signature of the Regional Director the LOF had a note attached indicating what date the LOF should bear -- these notes were at varying times written by MCCANN, BUCCI or RANDOLPH).

3. WILSON stated that the overwhelming majority of backdatings could be attributed to instances where

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9/3/86; 9/5/86; dap; 86-000290

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attempts were made to get the LOF out on the due date but for whatever reason this proved impossible, and the LOF did not go out until the following day. WILSON indicated she could only recall circumstances relating to this type of backdating (one day late).

4. WILSON stated that the secretarial help or whoever dated the LOF was either told directly by the Branch Chief, Division Director or Regional Director what date to use or the LOF had a note attached indicating the date to be used. WILSON admitted instructing the secretarial help to backdate but insisted it was at the direction of her supervisors.

5. WILSON indicated she could not recall when the backdating began but believed it started in 1983 when she became Branch Chief of Post-Secondary Education. She felt backdating was begun so employees could successfully meet goals contained in their merit pay agreements. WILSON stated she does not sign her performance agreements because she feels the standards contained therein (Adams Due Date met 100% of the time) are unreasonable.

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATION
U.S. DEPARTMENT OF EDUCATION

PERSON INTERVIEWED:	Brenda L. Wolff Attorney Office for Civil Rights Region I
PLACE OF INTERVIEW:	IG Office, Boston, MA
DATE OF INTERVIEW:	August 11, 1986
INTERVIEWED BY:	J.B. Taylor, Kenneth F. Crossen Special Agents

BRENDA L. WOLFF has been an Attorney for OCR, Region I since May, 1985. She was interviewed regarding alleged backdating of documents emanating from OCR, Region I. During the interview she furnished the following information:

1. All LOF's and LOA's are furnished to the attorney section for review and approval before being mailed. Her duties include reviewing and approving LOF's and LOA's.

2. LOF's and LOA's submitted to the attorney section are accompanied by a cover sheet prepared by the Equal Opportunity Specialist (EOS) submitting the LOF or LOA. The Legal Technician in the attorney section enters the date received and the date returned on this form. A copy of this form is returned to the EOS with the LOF or LOA and the original is retained by the legal section. She stated the dates of receipt and return contained on these forms are accurate.

3. When she reviewed an LOF or LOA that was already past the Adams due date, she initialed the last page of the copy but did not put a date by her initials. When she reviewed an LOF or LOA that was not past the Adams due date she initialed and dated the last page of the copy.

08/14/86; 08/15/86; dap; 86-000290

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4. She initially became aware that LOF's and LOA's were being backdated from comments made by other employees and office rumors.

5. MS. WOLFF recalled one incident in which LOU SIMONINI demanded that she put a date next to her initials on an LOF or MOA which had already been backdated by EOS ETHEL POWELL and Branch Chief PAUL MCMANUS. She stated she refused and told SIMONINI she felt the "Bar" would disapprove of an attorney backdating documents. She advised that POWELL and MCMANUS were both present during this conversation. She was unable to recall the specific case involved but thought that "Lakin" was the complainants.

6. In the Fall of 1985, she heard a rumor that after a report had been sent to the complainant, someone realized it contained a date that was beyond the Adams due date, so they changed the date on the file copy to show the Adams date was met. She advised that if this case was ever appealed this would be discovered as both the OCR and appellant files would be sent to Headquarters. She could not recall the specific case, who the EOS was, or exactly when it occurred. She did recall that ROBERT RANDOLPH was the Division Director.

7. She has discussed the backdating with LOA BLISS and LARRY HUMPHREY. She said each of them followed the practice of not dating LOF's or LOA's when they reviewed them after the Adams date.

8. She estimated that at least 50% of the LOF's and LOA's she reviewed were backdated. She felt this was probably done so employees could successfully meet goals contained in the performance agreements and merit pay agreements.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH ADAMS, *et al.*,
Plaintiffs,
v.
WILLIAM BENNETT, Secretary of Education, *et al.*,
Defendants.

Civil Action No. 3095-70

WOMEN'S EQUITY ACTION LEAGUE, *et al.*,
Plaintiffs,
v.
WILLIAM BENNETT, Secretary of Education, *et al.*,
Defendants.

Civil Action No. 74-1720

REPORT TO THE COURT

In July, it came to the attention of the Secretary of Education that some employees of the Department's Region I office (Office for Civil Rights) (OCR) in Boston might have engaged in the practice of backdating documents or failing to follow internal procedures required to track processing of complaints, which must be handled within certain timeframes under this Court's orders of March 11, 1983 and January 17, 1985 in these consolidated cases. The Department of Education has promptly and vigorously taken action to investigate, prevent and, if appropriate, punish those involved in any such practices. The defendants wish to advise the Court and counsel of the results of their preliminary investigation into this matter and of the steps being taken by the Department of Education to prevent a recurrence.

A. Summary of Preliminary Investigative Findings

This Court's order of March 11, 1983, as modified January 17, 1985, contained timeframes governing OCR's processing of complaints and compliance reviews. The Order also permits OCR to "toll" the processing of complaints and compliance reviews for various reasons including, *inter alia*, witness unavailability caused by extended absences and denial of access to information. Order at 13-14. During a management review earlier this summer, at the time an interim Acting Regional Director was appointed, questions were raised concerning implementation of the system used by OCR, Region I, to record and to report dates for processing complaints and compliance reviews -- and possible falsification of certain processing dates. An investigation was immediately undertaken at the direction of the Secretary. The investigation conducted by OCR included a paper or "file" review of 38 targeted individual cases in which OCR had reason to believe there were problems and included two compliance reviews selected at random.[1] The Department's Inspector General, at the Department's request, is conducting a broader investigation, including interviews with employees. In its file review, OCR compared dates on documents and records from a variety of sources, such as acknowledgment letters, LOF clearances in the case files, logs maintained by a former Acting Regional Director,[2] attorneys' log entries, correspondence logs of the OCR Region I Director, and OCR's Automated Case Information Management System (ACIMS).[3] From July 30, 1985 to June 30, 1986, Region I received 168 complaints. This number of complaints resulted in 288 timeframes to be met under the terms of the Adams Order.

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[1] The case files were reviewed during the week of July 21-25, 1986, while in the custody of the Regional Inspector General.

The preliminary investigative results indicate that OCR procedures have been improperly implemented in connection with the processing individual complaints. More specifically, at the acknowledgment stage, the investigation disclosed eight instances where attorneys' tracking records reflect clearance one to six days subsequent (six instances were only one day subsequent) to the date typed on the file copy of the acknowledgment letter, which was the Adams due date in each of the eight cases. The investigation of LOFs disclosed discrepancies of up to six days (most of these were of one to three days) in records pertaining to fifteen cases, including: (1) six cases where the Regional Director's log indicates the LOFs were signed by the Regional Director one to three days after their issuance dates recorded in ACIMS; (2) three cases where the Regional Director's log indicates that the LOF was signed on the issuance date recorded in ACIMS and on the file copies of the LOFs, however, preceding entries in the Regional Director's log refer to correspondence signed one day subsequent to the issuance date; (3) seven of the previous nine cases where attorney records indicate that the LOFs were cleared one to six days after the issuance of an LOF; (4) five additional cases indicating that LOFs were cleared by the Civil Rights Attorneys Staff subsequent to issuance of the LOF; and (5) finally a typist's notation on the file copy of one LOF indicating that the LOF was typed one day after its issuance date. Finally, the investigation of compliance with the tolling provisions of the Court's order revealed one instance in which documentation contained in the file indicates that the "witness unavailability" tolling provision may have been invoked improperly.

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[2] This log system was initiated in April 1985 at the time the Acting Regional Director was a staff attorney. The log records the dates that documents come to the legal staff for clearance and the dates they were returned to the program staff for any reason.

[3] OCR collects and stores information on its complaint and compliance review activities in ACIMS. ACIMS is a fully automated on-line system that tracks the occurrence of critical events, such as Adams timeframes, and provides accurate and timely case information to staff in OCR's regional offices and headquarters.

B. Disciplinary Actions and Corrective Measures

The investigations conducted by OCR and Inspector General are still in progress and only preliminary findings have been rendered by OCR. OCR has determined, even on this basis, that the mismanagement disclosed by the investigation warrants consideration of performance downgrading and disciplinary actions against responsible employees and necessitates immediate steps to implement procedures that will prevent any recurrence of such mismanagement. OCR has already implemented the following actions:

- A new Acting Regional Director has been appointed in Region I. The new Acting Director, Region I, has been with the Office for Civil Rights for 21 years. The variety of substantive program and management positions he has held with the Office makes him uniquely qualified to serve as Acting Regional Director. For example, his former positions include that of: Acting Assistant Secretary (six months); Acting Regional Director; Branch Chief; Division Director; and Policy and Enforcement Service Director in Headquarters. The Acting Regional Director assumed his duties on August 11, 1986.

- OCR's Investigative Procedures Manual is under review for appropriate revision to clarify instructions on tolling provisions, and to reaffirm the importance of accurate recordation of dates in the processing of civil rights documents at all staff levels.

- An OCR team, composed of headquarters and regional staff, is conducting reviews of other OCR regional offices to determine whether similar abuses and/or related problems exist in the handling of complaint and compliance review documents.

- As a precautionary measure, OCR has directed all Regional Directors to review the procedures for recording Adams timeframes and tolling provisions.

The final investigative results of both OCR and the Inspector General will be provided to the court and plaintiffs as soon as they are available. Any additional management or disciplinary actions warranted by these results will be acted upon promptly by the Department.

Respectfully submitted,

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FROM : Edward A. Stutman Edward A Stutman 12/5/86
Attorney Advisor to the
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Linda A. McGovern Edward A Stutman for
Acting Regional Civil Rights Director 12/5/86
Region V

SUBJECT: Consolidated Report of Reviews of Regional Accuracy in Performing, Recording, and Reporting Acts Critical to Compliance with Time Frames Established in Adams v. Bennett (Adams) EXECUTIVE SUMMARY

From August 11 through 21, 1986, three teams composed of Office for Civil Rights (OCR) employees reviewed case files in Regions II through X to determine whether there is any evidence that: (1) acknowledgment letters and Letters of Findings (LOFs) have not been accurately dated and transmitted; (2) transmission dates for those documents have not been accurately reported in the Automated Case Information Management System (ACIMS); and (3) the tolling provisions of the Adams order have not been implemented appropriately. At the conclusion of the on-site reviews, each team filed reports of its findings, Region by Region. The Regional Directors (RD) were then afforded an opportunity to comment on the reports. You requested that we consolidate and synthesize the principal findings of the individual Regional reports including the comments of the RDs, and submit a single consolidated report on the Regional reviews for your consideration.

I. Background

OCR is responsible for enforcing civil rights statutes that prohibit discrimination on the basis of race, color, national origin, sex, handicap, and age in programs and activities that receive assistance from the the Education Department. OCR relies primarily on investigating individual complaints and conducting compliance reviews to ensure compliance with the four principal statutes it enforces. All complaints, other than those alleging discrimination on account of age, and all compliance reviews must be processed in accordance with the strict case processing time frames mandated by the court order in Adams.

The Adams order provides OCR with 15 days to acknowledge the receipt of a complete complaint or to notify a complainant in writing if the complaint is not complete. The order provides that OCR must investigate a complaint and issue a Letter of Findings (LOF) within 105 days from receipt of the complete complaint. If a violation of civil rights law is found, OCR must negotiate and secure corrective action within 195 days from receipt of the complete complaint. If corrective action (i.e., voluntary compliance) is not secured, OCR must initiate formal enforcement action within 225 days from the receipt of the complete complaint.

The Adams order permits OCR to "toll" (i.e., interrupt) processing of complaints and compliance reviews in several circumstances including, where necessary witnesses are not available; where pending litigation involves the same institution and the same issues that would be addressed by the complaint investigation or compliance review; or where access to information has been denied.

The plan for reviewing case files in Regions II through X was developed as a result of the experience gained in the earlier review of Region I. Utilizing special selection criteria, OCR's Analysis and Data Collection Service (ADCS) provided three separate lists of cases for each Region -- a list of cases to be reviewed for accuracy of acknowledgment dates, a list of cases to be reviewed for accuracy of LOF dates, and a list of cases to be reviewed for tolling. Random samples were drawn when the numbers of cases on lists were high.

Three review teams were organized and trained. All team members convened in Washington for a 1 day training session before conducting the on-site reviews. At the training session, team members were provided with written instructions which described the purpose and plan for the on-site Regional reviews. The teams were instructed to examine relevant portions of the case files relating to the subject area under review but could explore any area of any file if, in their judgment, it was appropriate.

The Acting Assistant Secretary (AAS) instructed the Regional Directors on the purpose of the Regional reviews, the process that was to be followed by the teams, and the arrangements for which they, as RDs, would be responsible.

Each team then visited three Regional offices and conducted file reviews. The actual number of files reviewed in each Region and the numbers of subject area inquiries made are as follows:

Region	Files Actually Reviewed	Acknowledgment	LOF	Tolling	Total Subject Areas
Region I*	38	36	26	32	94
Region II	78	30	49	2	81
Region III	75	28	19	34	81
Region IV	62	19	32	11	62
Region V	70	23	38	9	70
Region VI	54	19	26	14	59
Region VII	48	6	36	8	50
Region VIII	17	0	17	0	17
Region IX	87	29	19	53	101
Region X	35	6	20	16	42
Totals	564	196	282	179	657

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*Reviewed separately in mid-July 1986.

II. Findings

With regard to recording the date on which complaints were received, occasional minor departures from OCR procedures and some questionable decisions were observed. However, these departures from OCR practice or errors, when they occurred, may be regarded as anomalies among the cases examined. On the whole, Regions accurately recorded the receipt dates of complaints.

With regard to accuracy in recording the dates that complaints were rendered "complete," a possible error in a series of cases was observed in one Region. Otherwise, Regions generally accurately recorded the completion dates of complaints.

With regard to backdating acknowledgment letters, in some Regions isolated discrepancies were found which may be regarded as anomalies among the cases examined. In other Regions, the absence of log entries or sign-offs on acknowledgment letters made substantiation of the issuance dates difficult. However, based on the information available, the absence of discrepancies suggests that regions were not backdating acknowledgment letters.

With regard to backdating LOFs, only a small number of dating discrepancies were found in Regions III and V that, in light of all the information, may be regarded as anomalies. In Region II, while no discrepancies were found, the absence of sign-offs on a number of LOFs made substantiation of all LOF issuance dates difficult. However, based on the information available, the absence of discrepancies suggests the likelihood that backdating of LOFs did not occur in these regions.

In Regions IV, VI, VII, IX, and X, dating discrepancies were found in a larger number of cases. In Region IV, discrepancies were found in 14 of 32 cases examined in that subject area; in Region VI, discrepancies were found in 18 of 26 cases; in Region VII, in 17 of 36 cases; in Region IX, in 7 of 20 cases; and in Region X, in 7 of 20 cases. While some of the RDs explained some discrepancies satisfactorily, no explanation was offered for other discrepancies, some explanations were incomplete, and some explanations may be regarded as questionable. Some explanations suggested that backdating had occurred. Overall, the available information suggests the likelihood that some LOFs were backdated in these regions. In Region VIII, the Adams LOF due date was incorrectly regarded as met in a series of 10 cases.

The reviews disclosed that Regions III, IV, VI, IX, and X routinely initiated tolls without an adequate basis in the tolling provisions of the Adams order or OCR written guidance interpreting those provisions. Cases were sytematically tolled when a recipient operating in good faith simply could not meet OCR's time frames for providing information or was otherwise delayed in providing information. In such circumstances, some Regions (IX and X) incorrectly invoked the "witness unavailability" tolling provision.

In the same circumstances, other Regions (III and IV) incorrectly invoked the "denial of access" tolling provision. File documents and the comments of some of the RDs (e.g., ARD III and RD X) suggest the likelihood that much of the incorrect tolling was the direct result of misinterpretations of the tolling provisions of the Adams order. An absence of monitoring the initiation of tolls on the part of some senior managers also was apparent. The result is that a large number of tolls examined in those Regions may be considered as having been incorrectly initiated. The reviews also disclosed instances where tolls continued well beyond the time that they should have, regardless of whether the toll was originally appropriately initiated under the Adams order.

Some of the objectionable practices described above are the result of uninformed, careless, or thoughtless Regional management. However, the foregoing is not uniformly the case, even within a Region. The files provided an indication that conditions existed which could lead to incorrect or strained interpretations of the tolling provisions as well as other objectionable case management practices. These conditions were created by different forces, among them the absence of a uniform system for supervising and monitoring the implementation of the tolling provisions of the Adams order. Another was the Supreme Court's decision in Grove City v. Bell. The Grove City decision created new and additional investigative tasks which OCR was, thereafter, required to accomplish within the time frames that had been established under different conditions. For the most part, each region was unique in its response to the new tasks and conditions.

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TO : Alicia Coro
Acting Assistant Secretary
for Civil Rights

FROM : Edward A. Stutman Edward A Stutman
Attorney Advisor to the
Assistant Secretary for Civil Rights

Submitted: 12-5-86

Linda A. McGovern Edward A Stutman FOR
Acting Regional Civil Rights Director
Region V

SUBJECT: Consolidated Report of Reviews of Regional Accuracy in Performing, Recording, and Reporting Acts Critical to Compliance with Time Frames Established in Adams v. Bennett (Adams)*

From August 11 through 21, 1986, three teams composed of Office for Civil Rights (OCR) employees reviewed case files in Regions II** through X to determine whether there is any evidence that: (1) acknowledgment letters and Letters of Findings (LOFs) have not been accurately dated and transmitted; (2) transmission dates for those documents have not been accurately reported in the Automated Case Information Management System (ACIMS); and (3) the tolling provisions of the Adams order have not been implemented appropriately. At the conclusion of the on-site reviews, each team filed reports of its findings, Region by Region, and Regional officials were provided an opportunity to comment on those reports. You requested that we consolidate and synthesize the principal findings of the individual Regional reports including the comments of Regional officials, and submit a single consolidated report on the Regional reviews for your consideration.

This Consolidated Report provides background on the planning and conduct of the Regional reviews: includes a compilation, synthesis, and analysis of the most significant findings on a Region-by-Region basis; and presents the comments offered by Regional officials on the findings reported by the review teams. The report also makes recommendations for measures OCR could consider to eliminate incorrect and objectionable practices and otherwise strengthen procedures to ensure accuracy in performing and reporting case processing activities.

Reports of the individual Regional reviews are attached as Appendices I through X. Responses of the Regional Directors to the reports on Regions II through X are included at the corresponding appendix. Also attached at Appendix IV is a report of a review conducted independently by the Acting

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*Adams v. Bennett, No. 3095-70 (D.D.C. March 11, 1983)(as modified January 17, 1985).

**An OCR team reviewed case files in Region I in mid-July 1986, and a report of that review was submitted to you previously. A copy of the report is attached at Appendix I.

Regional Director, Region IV, of tolling practices in that Region. Other attachments are as indicated. Personally identifiable information regarding complainants has been redacted from all appendices.

I. BACKGROUND

OCR is responsible for enforcing civil rights statutes that prohibit discrimination on the basis of race, color, national origin, sex, handicap, and age in programs and activities that receive assistance from the the Education Department. These statutes include Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975.

OCR relies primarily on investigating individual complaints and conducting compliance reviews to ensure compliance with the four principal statutes which it enforces. All complaints, other than those alleging discrimination on account of age, and all compliance reviews must be processed in accordance with the strict case processing time frames mandated by the court order in Adams.

A. Adams Order Time Frame Requirements for Processing Cases

During the pendency of the Adams litigation, OCR has operated under a series of orders with different features. Currently, OCR operates under the terms of an order entered on January 17, 1985. The January 17, 1985, order revives the terms of a consent decree entered in Adams in 1977, while retaining certain features of an order entered in the case on March 11, 1983.

Since 1977, all the orders have contained the same strict time frames within which OCR must process cases. The Adams order provides OCR with 15 days to acknowledge the receipt of a complete complaint or to notify a complainant in writing if the complaint is not complete. If the complaint is incomplete, the complainant is allowed time within which to complete the complaint* following notification from OCR that additional information is needed. The date a complaint is regarded as "complete" is the case "start" date for all other Adams order time frame counting purposes.

The Adams order provides that OCR must investigate a complaint and issue a Letter of Findings (LOF) within 105 days from receipt of the complete complaint. If a violation of civil rights law is found, OCR must negotiate and secure corrective action within 195 days from receipt of the complete complaint. If corrective action (i.e., voluntary compliance) is not secured, OCR must initiate formal enforcement action within 225 days from the receipt of the complete complaint.

With regard to compliance reviews, the Adams order requires that OCR issue findings within 90 days from commencement of OCR's on-site visit to the institution. Where no on-site investigation is conducted, the review is regarded as "commenced" on the date OCR requests data from the recipient. If the institution is found not to be in compliance, OCR has 180 days from the commencement of the review to seek voluntary compliance and must initiate formal enforcement action within 210 days of the date the review is begun.

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*One hundred and twenty days under the 1977 Adams order; 60 days under the 1983 order.

The 1983 Adams order provides for exceptions from the time frames for up to 20 percent of complaints and compliance reviews nationally in a fiscal year, with no more than 30 percent occurring in cases in any one statutory jurisdiction (e.g., Section 504) or Region. The exceptions extend the investigation stage from 90 days to 180 days and the negotiation stage from 90 to 120 days, and the enforcement stage from 195 to 345 days.

Moreover the order permits OCR to "toll" (i.e., interrupt) processing of complaints and compliance reviews where: (1) witnesses are not available; (2) an existing court order prohibits the Department from proceeding; (3) pending litigation involves the same institution and the same issues that would be addressed by the complaint investigation or compliance review; (4) access to information has been denied, and the Department has initiated action to secure compliance; or (5) a complaint that includes issues of age discrimination has been referred to the Federal Mediation and Conciliation Service.

Although the current Adams order combines features of two prior orders, in relation to the principal area of the teams' inquiry, OCR's obligations have remained constant since 1977. The acknowledgment and LOF time frames have been the same in every order. Even the differences between orders are not seen as relevant for the purposes of this inquiry. For example, the 1977 order permitted tolling only when a witness was unavailable. The March 11, 1983, order added (and the current order retains) four other circumstances in which tolling would be permitted. However, since all cases reviewed by the teams were opened after March 11, 1983, the same tolling provisions apply to all cases reviewed.

The Adams order requires OCR to provide reports to the Adams plaintiffs twice a year, on April 30 and October 31. These reports include information on complaint and compliance review activities, including national and Regional information on complaint and compliance review receipts, starts, closures, cases pending, and staff productivity. The reports also include information on: (1) adherence to complaint and compliance review time frames, including information on cases processed under the normal and exceptional time frames; (2) the number of complaints and compliance reviews using the time frame exceptions; and (3) the number of complaints and compliance reviews in which the time frames were tolled.

Under the Performance Management and Recognition System (PMRS), performance agreements of all OCR Regional program managers contain performance standards which require that "100 percent of the Adams due dates" be met, permitting the utilization of the exceptional time frames option for "no more than 20 percent of the due dates."* This PMRS provision is a standard of a "critical element" of performance. An OCR program manager who missed more than 20 percent of the due dates could be rated as having failed to meet an important objective of a critical element in his/her performance agreement. This failure would necessarily seriously affect the employee's overall rating, notwithstanding satisfactory performance in other areas.

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*The performance of Regional managers is measured, in part, by the number of time frames met. The Adams order measures OCR's performance by the number of cases in which the time frames are met.

OCR collects and stores information on its complaint and compliance review activities in its Automated Case Information Management System (ACIMS). ACIMS is a fully automated on-line system which tracks the occurrence of critical events, such as Adams time frames, and provides accurate and timely case information to staff in OCR's Regional Offices and at Headquarters.

B. OCR's Regional Office Organization

Each Regional Office is supervised by a Regional Director (RD) who is responsible for directing the operations of the Regional Office and meeting all program objectives.

With the exceptions of Regions VIII and X, OCR's Regional Offices are organized into Divisions and Branches based on areas of responsibility. The Elementary and Secondary Education Division (ESED), under the supervision of a Director, conducts complaint investigations and compliance reviews in preschool, elementary, and secondary education institutions, and vocational-technical schools. The Postsecondary Education Division (PSED) conducts the same compliance functions as ESED except that PSED functions are related to institutions of postsecondary education and vocational rehabilitation agencies and providers. In Regions VIII and X, a single Division, the Compliance and Enforcement Division (CED), carries out compliance functions in both program areas. Within OCR, investigators/employees assigned to these Divisions are informally referred to as "program staff."

The Program Review and Management Support Staff (PRMS), under the supervision of a Director, provides the Regional Director with information and advice concerning the meeting of OCR program and operations objectives, the number of compliance activities completed, and adherence to OCR compliance decisions and policies. Although there is variation among Regions, among other things, the PRMS staff monitors the completion of compliance actions within established time frames and performs complaint intake, including determination of jurisdiction and completeness.

The Regional Civil Rights Attorneys Staff operates under the direction of the RD. The Chief Regional Civil Rights Attorney and the attorneys serve as counsel on legal and policy issues and provide legal guidance, advice, and support to the Regional Office. The Attorneys Staff provides final legal case review and reviews for legal sufficiency cases, settlements, and other matters resolved Regionally or submitted by the Region to Headquarters. The Attorneys Staff renders legal opinions on OCR's jurisdiction; provides legal guidance on the development of investigative plans; and participates in the development of investigative reports, Letters of Findings, and negotiated settlements.

C. OCR Written Procedures and Provisions of the *Adams* Order Relevant to the Case File Review

The procedures that OCR staff follow in conducting case processing activities relevant to this review are primarily contained in OCR's Investigation Procedures Manual, December 1985 (IPM). Other procedures were communicated to regional personnel in memoranda from headquarters. Several of the IPM provisions and provisions from guidance memoranda are set forth here to provide additional background for the discussion that follows. Certain provisions of the *Adams* order are set forth for the same reason.

Section I-1.3 of the IPM provides that on the day an incoming complaint is received -- complete or incomplete, it must be date stamped, an ACIMS Case Control Form (CCF) initiated, and an official case file created.

The 1977 *Adams* order defines "complaint" as an allegation that "an affected institution has violated one or more of the applicable laws and/or regulations promulgated under those laws. A 'complete complaint' is one which (a) identifies the complainant by name and address; (b) generally identifies or describes those injured by the alleged discrimination (names of the injured persons shall not be required); (c) identifies the affected institution or individual alleged to have discriminated in sufficient detail to inform the Office for Civil Rights what discrimination occurred and when it occurred to permit ED to commence an investigation." The date a complaint is regarded as "complete" is the date from which all the *Adams* time frames are counted.

Section I-3 of the IPM contains procedures to be used by OCR staff in "acknowledging" complaints or notifying complaints that their complaints are deemed "incomplete." Section I-3.3 requires that the Regional Attorneys Staff review all acknowledgment and notification letters.

The order in *Adams v. Bennett* entered March 11, 1983, permits the time frames to be tolled (i.e., interrupted) "[i]f any person whose testimony is material and relevant to the allegation is unavailable by reason of extended absence (e.g., summer recess, sabbatical or illness) . . . ." The *Adams* order also permits OCR to toll a case "if the Assistant Secretary . . . determines that pending litigation involving the same affected institution and the same issues as are the subject of a complaint or a compliance review prevents or makes inappropriate" the continued processing of the case. OCR also is permitted to toll a case if the recipient refuses to allow an investigation to be conducted "or without good cause refuses to supply records or other materials which are necessary material and relevant and without which the investigation cannot go forward . . . ." *Adams* order at paragraph 19. With respect to a toll initiated on account of denial of access, the order states that "if an institution refuses to allow an investigation to go forward, or without good cause refuses to supply records or other materials which are necessary material and relevant and without which the investigation cannot go forward within 60 days of ED's request to do so, ED shall attempt to secure voluntary compliance within 120 days of the request." If OCR is unsuccessful, it must "initiate formal enforcement . . . within 150 days of the request." 1983 *Adams* order at paragraph 19.

In discussing witness unavailability, the IPM states that "[i]f any person whose testimony is relevant to the allegation is unavailable by reason of an extended absence (e.g., summer recess, sabbatical or illness) and if this prevents OCR from completing the investigation (including negotiations within the required time frames), OCR will notify the complainant that the time frames will be tolled. . . ." IPM II-2.134. Aside from requiring that the complainant be notified in writing that the case has been tolled, the IPM does not require that documentation be included in the case file which explains the basis for the toll nor supports its initiation or continuation. Nor does the IPM include any requirement that such tolls be approved by senior or middle managers prior to initiation.

A memorandum of June 9, 1983, provided "Guidance on Implementing the March 11, 1983 *Adams* Order" in question and answer form. (Appendix XI) One of the answers addressed "When may OCR toll the time frames for 'witness unavailability'?" The memorandum stated, in part:

> This provision permits the tolling of the time frame only if a witness, defined "as a person whose testimony is material and relevant," is unavailable. The time frames may not be tolled if the person unavailable is not a witness, as defined in [paragraph] 19(a). The time frames may be tolled at the negotiation stage as well as the investigation stage, if the unavailable witness is necessary for the negotiations.

The June 9 memorandum continued: "The time frames may *not* be tolled [on account of witness unavailability] if, during the time period for negotiations, a negotiator is unavailable." (emphasis in original)

A memorandum of March 7, 1984, on the subject of "Calculation of Due Dates for Tolled Cases" (at Appendix XII) explained the methodology to be used in calculating time frames for tolled cases and provided some guidance on the application of the tolling provisions. The memorandum states that "the toll start date is the date OCR discovers the case needs to be tolled. Likewise, the toll end date is the date that OCR discovers that case processing can resume."

The IPM identifies four "Actions [by a recipient] Constituting Denial of Access": (1) "refusal to provide OCR access to written or nonwritten information . . . ."; (2) "refusal to allow OCR access to employees . . . ."; (3) failure of a recipient to provide information . . . "if one of its employees refuses to do so . . . ."; and (4) "refusal to complete OMB approved" survey forms. (IPM II-2.141) Clearly a case may be tolled immediately where there has been an outright refusal to provide information. More ambiguous is the provision that OCR should secure voluntary compliance -- and, presumably, toll the case -- where a recipient without good cause refuses to provide information *within 60 days* of the request. It is not clear what was intended by the phrase "within 60 days." It may have been intended to permit OCR to construe a *failure* "without good cause" to supply information by the expiration of 60 days from the request as a "refus[al]" to do so. Aside from a mention in passing in § 2.142 of the IPM (Enforcement Proceedings for Denial of Access), the phrase is not addressed by OCR.

Section II-6.41 of the IPM provides that the official OCR case file "should indicate" that the LOF was reviewed by the Branch Chief, Division Director, and Chief Regional Attorney and was signed by the Regional Director.

D. Plan for Reviewing Case Files in Regions II through X

The plan for reviewing case files in Regions II through X was developed as a result of the experience gained in the earlier review of Region I.

1. Identification of the Cases to be Reviewed

The cases selected to be reviewed in the acknowledgment and LOF subject areas do not represent a random sample of all OCR cases or all cases in which acknowledgment letters or LOFs were issued. Instead, cases were selected for review where the expectation of backdating of acknowledgment letters and LOFs would be greatest, if it had occurred at all. Such cases were in the universe of cases in which ACIMS records the acknowledgment letter or LOF as having been issued exactly on the *Adams* due date.* The results of the review, therefore, do not represent the frequency of dating discrepancies occurring among OCR's cases as a whole, nor in all cases in which acknowledgement letters or LOFs were issued during a given period. Instead, the results present the frequency of dating and other discrepancies within the highest risk group of cases -- those in which issuance of the time sensitive documents came on the last day.

All cases selected to be reviewed in the tolling subject area were in toll status on February 27, 1986. That date was chosen to eliminate the possibility of an artificially inflated number of cases being in toll status because of "witness unavailability" due to extended school holidays. Aside from that variable (i.e., date), the universe is all tolled cases.** The tolling practices found to exist among the individual Regions may be said to represent their practices generally at the time the cases were placed on toll.

OCR's Analysis and Data Collection Service (ADCS) identified all cases, by Region, which were closed on their LOF due dates with findings of either "no violation" or "violation-corrected" [i.e., all complaints and compliance reviews closed with ACIMS closure codes 91 (no violation), 93 (remedial action completed), and 94 (remedial action plan agreed to)].***

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*Between July 1, 1985, and June 30, 1986, ACIMS reports that OCR issued approximately 31 percent of its LOFs exactly on the LOF due date. Forty percent were issued at least 1 day before the LOF due date, and 29 percent after the LOF due date.

**With the exception of Regions III and IX, *all* cases in toll status on February 27, 1986, were reviewed. As both Regions III and IX had large numbers of cases in toll status on that date (94 and 101 cases, respectively), in those Regions, samples were drawn at random from the pool. (See Chart 1, below at 8)

***The overwhelming majority of LOFs issued in a given year are issued in these categories. (In FY 1986, OCR issued 23 LOFs finding violations that had not been remedied.)

With reference to reviewing acknowledgment letters, ADCS identified, by Region, all cases in which complaints were acknowledged on the *Adams* acknowledgment due date. ADCS provided this information, by Region, for the period July 1, 1985, through June 30, 1986.

To evaluate whether the tolling provisions had been appropriately implemented, ADCS provided lists of all cases, by Region, in tolled status on February 27, 1986.

Therefore, ADCS provided three separate lists for each Region -- a list of cases to be reviewed for accuracy of acknowledgment dates, a list of cases to be reviewed for accuracy of LOF dates, and a list of cases to be reviewed for tolling. Samples were drawn when the numbers of cases on lists were high.

With regard to cases to be selected for acknowledgment letter or LOF review, the variation in the numbers of cases on the lists correlated generally (although not entirely) with differences between Regions in complaint and compliance review load.* For example, in Region VIII (Denver), a Region with a relatively small complaint load, ACIMS identified only 17 cases to be reviewed for LOF date accuracy. Necessarily, all 17 were reviewed by the team. However, in Region V (Chicago), a Region with a large complaint load, ACIMS identified 90 cases as having had the LOF issued on the *Adams* due date. Of that number, 30 complaint cases and all 9 compliance reviews were selected to be reviewed in the LOF subject area.

The numbers of cases** *identified* by the computer (and then, in some cases, randomly selected) to be reviewed in each Region in each subject area was as follows:

CHART 1

Region	Acknowledgment	LOF	Tolling	TOTALS
Region II	30s**	52	2	84
Region III	30s	19	35s	84
Region IV	19	32s	11	62
Region V	23s	39s	9	71
Region VI	20	27	13	60
Region VII	5	36s	8	49
Region VIII	0	17	0	17
Region IX	30s	22	40s	92
Region X	3	20	16	39
TOTALS	160	264	134	558

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*The "number of cases" as used here means the number of cases that appeared on the computer lists of cases that met the selection criteria. Since some cases met the criteria for review in more than one subject area of inquiry, they appeared on two computer lists. For example, a case might have been on toll on February 27, 1986, and also had the LOF issued on the *Adams* due date. Such cases were examined in *both* subject areas. With respect to the "number" of files actually reviewed and subject areas examined, see Charts 2 and 3 below at 9.

**An "s" indicates that this figure is a sample of the cases on the lists.

If a case appeared on more than one list, it meant that one file would be reviewed in two subject areas. In a few instances, because files could not be located or through inadvertence, teams examined fewer or different cases than were originally selected. In light of the foregoing, the number of files actually examined did not necessarily correspond to the number of cases on the lists. The number of files actually examined, by Region is as follows:

CHART 2

Region	Cases on Lists	Cases on two Lists	Files to be Reviewed	Files Not Located	Other Files Eliminated	Separate Files Actually Reviewed
Region I*						38
Region II	84	3	81	3	0	78
Region III	84	6	78	3	0	75
Region IV	62	0	62	0	0	62
Region V	71	0	71	0	1	70
Region VI	60	4	56	2	0	54
Region VII	49	1	48	0	0	48
Region VIII	17	0	17	0	0	17
Region IX	92	2	90	2	1	87
Region X	39	4	35	0	0	35
Totals	596	20		10	2	564

Review team members were instructed to examine relevant portions of the case files relating to the subject area under review. However, they were specifically instructed to explore any area of any file if, in their judgment, it was appropriate. In some cases, teams reviewed a larger number of cases in a subject area than planned. In a few cases, fewer cases were reviewed because files could not be located or through inadvertence. The number of subject area inquiries actually made are as follows:

CHART 3

Region	Files Actually Reviewed	Acknowledgment	LOF	Tolling	Total Subject Areas
Region I*	38	36	26	32	94
Region II	78	30	49	2	81
Region III	75	28	19	34	81
Region IV	62	19	32	11	62
Region V	70	23	38	9	70
Region VI	54	19	26	14	59
Region VII	48	6	36	8	50
Region VIII	17	0	17	0	17
Region IX	87	29	19	53	101
Region X	35	6	20	16	42
Totals	564	196	282	179	657

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*As mentioned earlier, the review of Region I preceded the reviews of the other nine Regions and used a different method of case selection. In Region I, the review team reviewed 38 case files, almost all in more than one subject area.

2. Instructions Provided to Regional Directors

On August 6, 1986, the Acting Assistant Secretary (AAS) convened a conference call to brief the RDs on the purpose of the Regional reviews, the process that was to be followed by the teams, and the arrangements for which they, as RDs, would be responsible. Those arrangements included: (1) providing teams with an office with a telephone in which to work in privacy; (2) assigning Regional staff to retrieve files identified for review; (3) providing teams with access to a photocopy machine; and (4) providing the teams, immediately upon their arrival, with copies of any logs maintained by the RDs or staff for the period July 1, 1985, though June 30, 1986.

Regional Directors were further advised that, with reference to this assignment, all team members report directly to the Office of the AAS and not to or though any RD. RDs were advised that they should not request or expect a briefing at any stage of this assignment from any of their own staff who may be serving as team members. RDs were asked to provide any of their staff who serve as team members with reasonable privacy, upon their return from the on-site reviews, in which to prepare their reports to the AAS.

In a memorandum sent by electronic mail on August 7, 1986 (attached as Appendix XIII), the AAS instructed all Regional Directors to institute immediately special procedures to ensure that all OCR staff sign out case files as they are removed from file cabinets for work purposes. RDs were instructed to develop a sign-out form that includes spaces for entering the name of the employee removing the file, the date and time the file is removed, and the date and time the file is returned. Absent unusual circumstances, and only as approved by the Regional Director, all official OCR case files are to be returned by staff for filing each evening. The Regional Directors were instructed to assign the responsibility for monitoring the sign-out process to a specific staff person and an alternate.

The memorandum instructed the RDs that these procedures were to remain in place until the AAS advises that the Regional Reviews have been completed.

3. Selection, Training, and Instruction of Review Team Members

The regional reviews were planned and organized by Ned Stutman, Attorney Advisor to the AAS, and Linda A. McGovern, Acting Regional Civil Rights Director, Region V.*

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*At the time the reviews were being planned, Ms. McGovern was the Deputy Regional Civil Rights Director, Region V. She has, at times, served as Acting Regional Civil Rights Director for that Region, a position she currently occupies. Because of her role in the Regional reviews, Ms. McGovern was, necessarily, aware of the overall review strategy and the criteria being utilized in the selection of cases. Nevertheless, precautions were taken to insulate her from information about Region V. For example, she was not provided in advance with lists of Region V cases to be reviewed; the review team's findings were not discussed with her in advance of its report; she did not provide the RD's response and she took no part in the preparation of the portions of this Consolidated Report that address findings made in Region V.

Three teams were selected. With the exception of Ned Stutman, who was the Leader of Team 3, all other team members were drawn from OCR Regional Offices. Several were selected on the recommendation of their RDs.

Team 1 consisted of Wilfred Lim (Leader), Civil Rights Attorney, Region IX; Lillian Gutierrez, PRMS Director, Region VIII; and Arthur Tedeschi, Region VI.

Team 2 consisted of John Benjes (Leader), Civil Rights Attorney, Region X; and Harry Orris, Director of ESED (Cleveland), Region V.

In addition to Mr. Stutman, Team 3 consisted of Helen Whitney, Acting Deputy Director, Region II; and Jean Simonitsch, Civil Rights Attorney, Region VII.

Ms. McGovern, in collaboration with Mr. Stutman, served as coordinator while the teams were conducting the on-site reviews, answering questions from team members as they arose and communicating with the Acting Assistant Secretary.

Each team visited three Regional Offices: Team 1 visited Regions II, III, and IV; Team 2 visited Regions VI, VII, and VIII; and Team 3 visited Regions V, IX, and X. Precautions were taken to ensure that no OCR staff was on a team that visited his/her own Regional Office and to ensure that no team member had access to lists of case files to be reviewed in their home Regions.

On Monday, August 10, 1986, all team members convened in Washington for a 1 day training session before conducting the on-site reviews. At the training session, team members were provided with written instructions (attached as Appendix XIV) which described the purpose and plan for the on-site Regional reviews.

The teams were trained in using the form to record information from case files. The recording form resembled but represented a refinement of the form developed and used earlier in the Region I review. Instructions for completing the form were provided and explained to team members. Both the form and instructions are attached as Appendix XV.

Team members were instructed that upon their arrival at a Regional Office, they should immediately provide the RD with the sealed envelope containing a list identifying the selection of case files to be reviewed. Unlike the lists provided to team members, the lists provided the RDs contained only the case name and OCR docket number and no other information about the cases. The RD's list did not reveal the criteria for selecting a case nor the reason a particular file was being reviewed. Therefore, team members were advised that they should not share their own case lists with Regional staff. A sample of an RD's list is attached as Appendix XVI.

The Team Leaders were instructed to request immediately, upon arrival, all available logs for the period July 1, 1985, through June 30, 1986, and July 1, 1984, through June 30, 1985. These include Attorneys Staff logs, RD logs, Program Division logs, and PMRS logs.

The teams were provided case lists for their own use in sealed envelopes. The teams were instructed not to open an envelope for a Region until they were traveling to that Region.

While the case lists provided to team members did, necessarily, identify to the teams the subject areas to be examined with respect to the cases on each list, they did not expressly identify the criteria by which the cases were selected. The sentence at the top of the computer printout page which identified the computer run was blackened so that even the reviewers could not be sure, at least when the process began, how the acknowledgment and LOF cases were selected. An example of a list provided to team members is attached as Appendix XVII.

Handwritten notations were made at the top of each case list provided to team members -- "C" or "CR" or "Ack" or "T." The instructions advised the team members that cases on the lists marked "Ack" were to be reviewed to determine if acts required to clear, sign, and transmit acknowledgment letters occurred as reported; cases on the lists marked "C" and "CR" were to be reviewed to determine if acts required to clear, sign, and transmit LOFs occurred as reported; and cases on the lists marked "T" were to be reviewed to determine if the overall use of the tolling provisions of the Adams order was justified under established procedures.

The recording forms included spaces for information relevant to different aspects of the inquiry -- acknowledgment due date, LOF due date, and tolling. Depending on the list from which the selected case was derived (i.e., "Ack," "C," "CR," or "T"), team members were instructed to examine relevant portions of the case file and complete that portion of the form related to the reason the case was selected for review. (The recording forms contained a place to indicate the purpose for which the case was reviewed.) For example, a case listed on the printout titled "C" or "CR" was to be examined and the form completed only regarding acts surrounding the issuance of the LOF. Other portions of the recording form for that case were not to be completed, unless the case appeared on another list. Notwithstanding the foregoing, however, team members were specifically instructed to explore any area of any file and record data relating to any of the three areas of inquiry, if, in their judgment, it was useful.

Within a subject area (i.e., "Ack," "C," "CR," or "T"), all relevant documents in case files were reviewed. Dates on acknowledgment letters or LOFs and clearances in the case files were to be compared, and these dates compared further with entries made in any logs that were made available by the RDs. The dates from file and log documents were to be further compared with data from ACIMS.

Team members were instructed to use their own practical experience, professional training, and judgment in deciding whether a particular peculiarity or departure from OCR practice that they might find on the face of documentation created an inference of impropriety or was otherwise worthy of comment. The foregoing, however, did not apply where inferences of intentional backdating were possible.

Team members were instructed that at the conclusion of the on-site reviews, they were to prepare written reports of their findings, Region by Region, and submit the reports to the Acting Assistant Secretary. By September 16, 1986, all teams had submitted reports, Region by Region, detailing their findings. On September 18, 1986, the Acting Assistant Secretary distributed the reports to individual RDs with a memorandum which requested comments on the substance of the reports. By October 7, 1986, responses from all Regional Directors had been received.

II. ABSTRACTS OF REVIEW REPORTS AND REGIONAL DIRECTORS' RESPONSES

In the following section, abstracts from the individual reports are presented, together with responsive comments of the RD about those reports. The abstracts are intended to provide an overview, by Region, of findings relating to dating of acknowledgment letters and LOFs, and to tolling practices. The abstracts should not be regarded as definitive or comprehensive and obviously are not meant to take the place of the reports or RDs' comments themselves.

Citations are the Appendix and page of Review Report (e.g., "IV-12"), or Appendix and RD's Response (e.g., "I-RD-5" or "I-RD-Case No. XX"), as indicated. Comments by the preparers of this Consolidated Report are, for the most part, confined to footnotes in this section.

Region I

[This review was conducted prior to and independent of the reviews conducted in Regions II through X. No Regional response to the report of this review was sought.]

A total of 38 cases was reviewed. With the exception of two, the cases were not randomly selected. Some cases were selected for review because an entry in the attorneys' log showed that the acknowledgment or LOF for that case was finally approved by an attorney after the date the acknowledgement or LOF was mailed, as recorded in the same log. Or a case might have been selected for review because the attorneys' log does not show a final approval and does show the proposed LOF being returned from the Attorneys Staff for modification close to, on, or after the Adams LOF due date. (I-6, 7)

In eight cases, the attorneys' tracking records reflected clearance of the acknowledgment letter subsequent to the date entered into ACIMS as the acknowledgment date and typed on the copy of the acknowledgment letter maintained in the case file. [Case Nos. 6, 32, 33, 34, 35, 36, 37, and 38] In six of these eight cases, the attorney clearance date reflected in the attorneys' records is 1 day later than the acknowledgment date entered into ACIMS and typed on the file copy; in one case [No. 35], it is 3 days later, and in one case [No. 37] it is 6 days later. In each of the eight cases, the acknowledgment date entered into ACIMS is the same as the Adams acknowledgment due date.

The review team noted date-of-clearance discrepancies between some of the records pertaining to issuance of LOFs in 15 of the 26 cases reviewed for accuracy of the LOF issuance date. (I-11)

A comparison of the LOF issuance dates reflected in ACIMS with the dates the LOFs were signed, as recorded in the Regional Director's correspondence log, reflected discrepancies in a number of cases. In six cases (Case Nos. 1, 6, 10, 15, 28, and 29), the date recorded in the log as the date the LOF had been signed by the Regional Director was after the date entered into ACIMS as the date the LOF had been issued.

According to ACIMS and the dates typed on the LOF file copies, each of these six LOFs was issued on its Adams LOF due date. However, the Regional Director's log states that each of these LOFs was signed from one to 3 days after its Adams LOF due date. With respect to three other cases (Case Nos. 21, 23, and 25), the dates reflected in the Regional Director's log as the dates the LOFs were signed are the same as the LOF issuance dates reflected in ACIMS and on the file copies of the LOFs. However, the entry in the Regional Director's log which immediately precedes the entry of each of these three LOFs refers to a document which was signed after the LOF issuance date reflected in ACIMS.

A number of discrepancies also were noted between the LOF issuance dates reflected in ACIMS and on the file copies of the LOFs, and the LOF dates recorded in the tracking records maintained by the Attorneys Staff. The team identified 12 cases in which the attorney clearance date (as shown in the attorney tracking records) was after the LOF issuance date recorded in ACIMS and on the LOF file copy (Case Nos. 1, 6, 8, 10, 15, 16, 17, 19, 21, 23, 24, and 25). According to ACIMS and the file copies, each of these LOFs was issued on its Adams LOF due date. However, the attorney tracking records indicate that the proposed LOF for each of these cases was finally approved, or was returned to a program division for additional modification, from 1 to 6 days after the Adams due date had passed.

In an effort to verify the records maintained by the Attorneys Staff, the team reviewed the file copies of these LOFs to ascertain the dates employees signed off on the file copies to indicate clearance of the LOF. Case files for two of these cases contained photocopies of the LOFs but did not contain file copies indicating clearances. Of the ten file copy LOFs which could be located, all were signed and nine were dated by the Equal Opportunity Specialist assigned to the case; all were signed and eight were dated by the Branch Chief assigned to the case; and seven were signed and three were dated by the Division Director assigned to the case. All of these employees signed off on the file copy on or before the LOF issuance date. Five of the LOFs showed clearance by any attorney other than the Chief Attorney, but the clearance was dated on only one LOF. Eight of the LOFs showed clearance by the Chief Attorney but the clearance was dated on only one LOF. The Chief Attorney's name was circled on six of the LOFs.

Clearance by members of the Attorneys Staff indicated on the file copies contradicted the attorney tracking records in two of the twelve cases. In eight other cases for which file copies of the LOFs were contained in the case file, no date of attorney clearance was indicated, and in six of these cases, the Chief Attorney's sign-off was circled. The team was advised that she would circle her name as a signal of her concern regarding the accuracy of records relating to issuance of the LOF.

Review of 32 of the case files included an examination of all instances of tolling of the Adams time frames. Of the 32 cases, 19 were not tolled on any occasion, 8 were tolled once, 4 were tolled twice, and 1 was tolled 3 times. Many of the tolling request forms did not contain sufficient information to enable the review team to determine whether tolling the case was appropriate, but based on the limited information available, all but one of the requests appeared to be plausible.* (I-12)

Region II

Of the original sample of 84 cases, 81 case files were reviewed. Three files could not be located.

Thirty case files were reviewed for "acknowledgment." Overall, the team reported that the acknowledgment letters appear to have been processed and issued with only a handful of minor problems. (II-4) The report describes no dating discrepancies.

Fifty-two cases were selected for review in the LOF subject area. In all cases, ACIMS records the LOF as having been issued on the Adams LOF due date. Of the 52 case files selected for review in the LOF subject area, 49 were located. The attorneys' log reflected clearance of 26 of these LOFs, all on the LOF due date.

File copies of 41 LOFs had sign-offs. Thirty-eight of those 41 LOFs had all sign-offs dated the same day as the LOF issuance date. Two other LOFs of the 41 had sign-offs dated earlier. The sign-off on one LOF had no date. The team's report states that seven LOFs had no sign-offs (II-5), but that number has been revised to eight (No. 36, 37, 42, 52, 53, 54, 58, and 76). There is no entry in the attorneys log showing clearance of the LOFs in six of these -- Nos. 36, 37, 42, 53, 54, and 58. Additionally, the team reports that LOFs in five* other cases (Nos. 31, 40, 56, 60 and 62) had sign-offs by only one person acting in several capacities, including as attorney, Chief Attorney, and Acting RD.

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*In a memorandum of August 15, 1986 (attached as Appendix XVIII), the ARD in Region I reported that he had reviewed all cases in toll status as of August 5, 1986. Of the 14 cases reviewed, the ARD reported that: "[e]ight were found to have a continuing valid basis for interrupt, although in some cases the projected end" for the toll "was advanced to an earlier date . . . ."; "[f]our were removed from interrupt immediately, with possible further adjustments necessary with respect to the toll end date"; "[o]ne was approved as a present valid interrupt . . . ."; and the review of one other case had not been completed.

The report describes no discrepancies between dates that appear in different records.

No problems were identified with regard to the tolls entered in either of the two cases selected for review in that subject area.

Acting Regional Director's** Comments:

The ARD's comments consisted of one page, in major part responding to the finding that in 4 cases, the sign-off file copy of the LOF was undated. The ARD explained that the Region ordinarily did not date file copies of LOFs. Instead, a copy of the final LOF, when signed by the RD, would be included in the file as well as the file copy on which staff sign-offs had been entered.

The ARD also stated, not in reference to any specific case, that the former ARD authorized him to sign the former ARD's name to LOFs on several occasions. The ARD stated that an explanation will be provided if necessary. (II-1)

Region III

The team reviewed 75 case files. Six of those case files were reviewed in two subject areas of inquiry. See Charts 2 and 3, above at 9.

The Region was unable to locate three case files, two of which had been selected for review in the acknowledgment subject area. (III-3, 4)

The team reviewed 28 cases in the acknowledgment subject area. In all 28 cases, the Adams acknowledgment due date recorded in ACIMS, the actual acknowledgment date as recorded in ACIMS, and the date on the acknowledgment letter were the same. (III-5) All file box clearances corresponded to the due dates of the acknowledgment letter or a day earlier, and there was no suggestion that backdating had occurred. (III-5)

The report noted one instance (Case No. 10) where an entry in the RD's log indicated that a letter had been received for clearance 1 day after its due date. (III-5)

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*The Team Report states that "there were seven LOFs that had no sign-off other than the Acting RD." (II-5) That number has been revised to five.

**The ARD assumed his position on March 31, 1986. Until then, he was Chief Regional Civil Rights Attorney, Region II.

Overall, the report stated that the team found that one file (Case No. 26) of the 28 reviewed lacked a complaint, three files (Case Nos. 15, 20, and 22) lacked case control forms, and four complaints (Case Nos. 6, 17, 18, and 25) were not date stamped. The team also observed that the Attorneys Staff did not review acknowledgment letters. (III-5)

The team reviewed 19 cases in the LOF subject area. ACIMS records all LOFs as having been issued on the Adams LOF due date. In 18 of the 19 LOFs reviewed by the team, the dates of the clearance signatures and RD log or attorneys log entries support the conclusion that the LOFs were issued on the dates indicated in ACIMS. (III-7) A dating discrepancy of 1 day was found between an entry in a typist's log and the issuance date of the LOF in one case (No. 46). (III-7)

The team was provided a list of 35 cases to review in the tolling subject area. The Region was unable to locate one case file, so the team reviewed 34 cases. (Nos. 48 through 81) (III-8) Of the 34 cases reviewed, at least 24 of the complaints were student health insurance cases (Nos. 57 - 68 and Nos. 70 - 81).*

Of the 34 cases reviewed, one case was tolled twice. Three cases were tolled on account of witness unavailability, and in each case, the file contained documentation to substantiate the unavailability of the witness. (III-8) In one of those cases (No. 50) the toll continued even though other investigative activity was taking place. The remaining 31 cases were tolled on account of "denial of access."

Of the 31 cases tolled on account of denial of access, the report stated that 20 files contained "some documentation within the file which provided evidence that a problem of access to information existed."** (III-8) Eleven cases did not. (Nos. 52, 61, 62, 63, 64, 66, 67, 70, 71, and 72) Toll documentation for some of these cases was found in other files, but with regard to Case Nos. 52, 62, 67, 72, and 80, the report stated that no documentation was found in any file explaining the basis for initiating the toll.

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*In FY 1985, OCR received 2,240 complaints. Of that number, 173 alleged that different colleges and universities discriminated on account of sex in the provision of student health insurance policies. In FY 1986, OCR received 2,648 complaints, of which 515 were student health insurance cases.

**All review teams were instructed to examine case files to determine whether documentation was present supporting or explaining the basis for the initiation of a toll. It is uncertain if Review Team 1 evaluated whether Region III had a sound basis on which to initiate tolls regardless of whether there was "documentation in the file." (If Team 1 performed such an evaluation, it is not clear whether the team itself applied the correct legal standard.) To initiate a toll based on denial of access, the Adams order seems to require more than the existence of a "problem" (such as a delay) in OCR's obtaining evidence from a recipient. The Adams order requires a refusal on the part of the recipient to supply records or to allow the investigation to go forward. The IPM provision on the subject reinforces the idea that a "refusal" to provide information is necessary. (IPM II-2.141, cited at page 6, above)

Moreover, it was not always apparent when a "denial of access" to information started or ended. In seven cases, it was apparent that, although the case was tolled, the complaint was still being investigated or negotiations being conducted between OCR and the recipient (Nos. 50, 52, 58, 64, 65, 76, and 80). (III-9) At least one of these (No. 50) was not taken off toll until it was closed, and one case (No. 62) continues to be carried as tolled in ACIMS even though it is now closed. (III-9) The ACIMS printout indicated that the time frames were being tolled for denial of access for periods ranging from 11 days to almost a year. (III-9)*

Acting Regional Director's** Comments:

The ARD explained why two case files could not be located during the review and stated that all three of the files which were not available at that time have been located and are now in their proper places in the file room available for inspection. (III-RD-1, 2)

The ARD confirmed that in Region III, the attorneys do not sign off on acknowledgment letters. Instead, in an effort to streamline the process, the Region conducts intake meetings to discuss incoming complaints. The substance of the acknowledgment letter is discussed by staff, including attorneys, at these meetings. (III-RD-4)

The ARD explained the discrepancy recorded in Case No. 10 by stating that the acknowledgment letter had indeed been sent on the due date but the file box copy was routed to the RD's secretary the next day and inadvertently logged by her as having been received for the first time on the following day. (III-RD-5) The ARD provided documentation supporting this explanation.

With reference to the dating discrepancy noted in Case No. 46 in the LOF subject area, the ARD commented that as 15 months have passed, the Region can only conclude that the 1 day discrepancy between the LOF issuance date as recorded in ACIMS and an entry in the typing log is a clerical error. (III-RD-6)

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*Team 1 prefaced this remark by stating that this "observation . . . was not a focus of this review." (III-9) In fact, the observation did relate to facts and issues which were a focus of the review in the tolling subject area. Team 1 made many necessary and appropriate observations regarding Regional tolling practices, but its comments suggest that it may have unnecessarily limited its review to the presence or absence of documents relating to a toll.

**The Acting Regional Director assumed her position on March 31, 1986. After extending her tour at the request of the Acting Assistant Secretary, the Acting Regional Director returned, as planned, to her position of record in Headquarters on October 6, 1986.

The ARD summarized the problems in the tolling subject area identified by the Team Report as: case processing occurring during the tolling period;* the lack of file documentation stating the the reason for initiating a toll; and incorrect calculations of ends for tolling periods. (III-RD-7) The ARD did not specifically address the appropriate legal standard to be used in initiating tolls on account of denial of access.

In the narrative portion of her comments, the ARD explained that most (but not all, e.g., Case Nos. 50 and 52) of the cases in which there was concurrent contact with the recipient were student health insurance cases (Nos. 58, 64, 65, 76, and 80) in which OCR had made extensive data requests. (III-RD-7) The ARD explained that such requests placed heavy data gathering burdens on recipients. (III-RD-7) Moreover, recipients who sought to revise their existing insurance plans would contact OCR seeking clarification of what constituted a nondiscriminatory health plan. The ARD explained that answering such questions was akin to providing technical assistance, rather than conducting an investigation.

The ARD stated that such activities were not case processing activities since OCR, in the absence of clear jurisdictional authority, was unable to proceed with the case and were in accord with the March 7, 1986, headquarters guidance on processing student health insurance cases. (III-RD-7)

With reference to the contact with the recipient and case processing during a toll found in Case No. 50, the ARD stated that the letter to the recipient was an acknowledgment to the recipient that requested information had been received. That information, when analyzed, was found not to be sufficient. The case remained tolled on that basis. (III-RD-Case No. 50)

In Case No. 52, the ARD acknowledged that interviews did take place while the case was tolled, but stated that steps had been taken to eliminate this practice. With regard to Case No. 64, the ARD stated that the tolling was warranted since OCR could not process the case without the data it had requested, and the contact with the recipient was warranted as the Region was clarifying the data request for the recipient and explaining what revisions were needed to the insurance policy for it to comply with Title IX. (III-RD-Case Nos. 64 and 76; cf. Case No. 80) The ARD stated that the contact in No. 65 was needed to discuss a letter the recipient was preparing to OCR stating the recipient's intention to change its insurance policy. (III-RD-Case No. 65)

The ARD stated that the file for Case No. 52 contained no documentation explaining the initiation of the toll. (III-RD-Case No. 52)

In the absence of a specific memorandum on the subject, in Case No. 57, the ARD explained the origin of the toll as inferred from existing documents.

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*Case processing activity in the form of contact with the recipient during the pendency of a denial of access toll raises questions as to whether OCR was actually being "denied access" to information while the toll was in process.

In Case Nos. 67 and 80, the ARD explained that, contrary to the team's findings, the case files did contain documentation about the toll. (III-RD-Case Nos. 67 and 80)

With reference to 14 student health insurance complaints against units of the Pennsylvania State University (PSU) system, the ARD explained that a memorandum approving tolling in all the cases was inadvertently not included in each relevant case file, but that this situation has been corrected. (III-RD-Case Nos. 61, 62, and 72) The ARD provided a copy of the tolling memorandum in the PSU cases.*

In other student health insurance cases, the ARD stated that the initiation of the denial of access toll was necessary because the data request was voluminous and the recipient was not able to respond within the time allotted. (III-RD-Case No. 80) While it should be emphasized that the team report did not identify it as a concern, the Regional submission does not suggest that in any of the cases tolled on account of denial of access, there was an outright refusal by PSU or any recipient to provide data.

Region IV

The Team Report observed that the ARD stated that the former Regional Director had instructed staff to dispose of his records prior to his departure in December 1985.

The team reviewed 62 case files in all subject areas.

In Case No. 18, the date of receipt of the complaint as recorded in ACIMS is 69 days later than the date on the complaint itself.

Nineteen case files were reviewed in the acknowledgment subject area. Of the 19 cases, 13 complaints had been determined to be "incomplete." In 11 of the 13 cases, the files documented the complaints being rendered complete. (IV-4)

In two cases (Nos. 2 and 3), files contained acknowledgment letters but also later correspondence making reference to the complaints being incomplete. The files contained no documentation explaining how or why the cases were later determined to be incomplete. (IV-4)

In 14 of the 19 cases reviewed in the acknowledgment subject area, the attorneys logs indicated that the Attorneys Staff had approved the letters on or before the date of issuance; in one other case there was an undated memorandum of approval, and in four cases (Nos. 2, 5, 9, and 13), there was no record of attorney approval. (IV-4)

In all but one case, all sign-offs on the file box copies of the acknowledgment letters were undated. (IV-4)

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*The memorandum requests permission to toll the PSU cases but does not explain why tolling is necessary. It is apparent, however, that delay in the transmission of data by PSU was the basis for the toll, and the ARD so states.

A total of 32 cases were revīwed in the LOF subject area. The Attorneys Staff did not sign off on the file-box copy of the LOF in any case. The practice in Region IV was that, following review of an LOF, an attorney issued a memorandum either concurring or concurring "conditionally" if recommended changes were made. There is no indication in the attorneys logs that LOFs "approved with changes" were resubmitted once the changes were made. (IV-5)

In two cases (Nos. 42 and 48), attorneys records show that, following attorney review, the LOF was returned to staff after the Adams due date. (IV-5)

In 11 of the 32 cases reviewed in the LOF subject area (Nos. 20, 25, 26, 29, 31, 33, 36, 39, 46, 47, and 48), sign-offs on the file box copy or typists' dated initials are between 1 and 4 days after the Adams due date. (IV-6 and 7)

In two cases (Nos. 32 and 38), the date on the LOF in the file was 1 day after the date entered in ACIMS as the actual issuance date.

In six cases (Nos. 25, 33, 34, 36, 37, and 39), the LOF due date as recorded in ACIMS was earlier than that recorded on the case control form in the file. The case control form for Case No. 33 also records an LOF issuance date 1 day after than recorded in ACIMS. (IV-8)

The team reviewed a total of 11 cases in the tolling subject area. The team reported that nine of these cases had been tolled on account of denial of access to information. The team's report stated that in each instance, there was a letter in the file from the recipient's attorney stating that access was being denied based on Smith v. Robinson.*

Case No. 60 was tolled twice on account of denial of access. The reason given for the first toll was that the recipient's attorney needed more time to gather information. The second toll was based on the attorney's request that OCR send him a legal memorandum on authority to release private files. The toll ended 17 days after the Region received the information. (IV-8)

Acting Regional Director's** Comments:

The ARD explained that the letter of complaint in Case No. 18 was received by the Region on January 16, 1986, but regarded as a courtesy copy of a complaint filed with a state agency. Following a telephone conversation with a state agency representative on February 18, 1986, "it was decided that the correspondence should be handled as a complaint." (IV-RD-2) It was forwarded to PRMS on that date, which became its receipt date.

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*104 S. Ct. 3457 (1984). In Smith, the Supreme Court held that attorneys' fees available to private parties who prevail in court actions under Section 504 of the Rehabilitation Act would not be available if the underlying claim of discrimination was also cognizable and brought concurrently under the Education of the Handicapped Act. Some recipients interpret dicta in the Smith decision as limiting OCR's jurisdiction in Section 504 matters affecting handicapped children and refuse to provide OCR with access to necessary information on that basis.

**The Acting Regional Director assumed his duties in Region IV on March 17, 1986. Until then, he was Regional Civil Rights Director, Region VII.

Case Nos. 2 and 3 each had two letters, one acknowledging that the complaint was complete and a later letter stating that it was not. The ARD stated that when the complaints were received, they were regarded as complete, and acknowledgment letters were sent. After several more complaints were received against Georgia school districts, the Chief Civil Rights Attorney stated that she did not think the new complaints were valid. PRMS disagreed. The former RD decided that all complaints against Georgia school districts should be regarded as incomplete, and the complainant required to answer further questions. Once the questions were answered, the Chief Attorney was to decide whether the complaints were complete. That is what occurred, and the complaints were regarded as complete when the Chief Attorney so decided.

The ARD stated that the files contain memoranda documenting attorney review of the acknowledgment letters in Case Nos. 2 and 5. The ARD stated that other documentation exists which shows attorney review of the acknowledgment letters in Case Nos. 9 and 13.

The ARD stated that it has not been the practice in Region IV to have attorneys sign off on LOFs. Instead, the attorneys provide memoranda. When "relatively minor changes" are requested, the LOFs are not resubmitted to the attorneys for review. (IV-RD-4)

In Case Nos. 42 and 48, attorneys records indicate that the LOF was reviewed and approved after the LOF due date. The ARD explained that in Case No. 42, the staff attorney completed his review of the LOF on the due date, but, due to clerical shortages, could not get the approval memorandum typed until December 20, 1985. The attorney's oral concurrence was reported to the Division Director and the Regional Director on December 17, and the LOF was issued on that date. The ARD stated further that this is a case where a sign-off should have been obtained and such will be the case in the future. (IV-RD-4) The explanation for Case No. 48 was similar. The ARD could offer no explanation of why the date of the attorney's memo in the file appears to have originally been May 16, with May 15 written over it.

Cases Nos. 26, 29, 31, 33, 36, 39, and 47 had LOF file copies with staff sign-offs of 1 to 4 days after the LOF due date. The ARD commented that he held separate meetings with the Deputy Regional Director and the Division Directors involved but "no explanations were offered which could explain the discrepancies to [the ARD's] satisfaction." (IV-RD-5) The ARD commented further that six of the seven cases were processed by the Elementary and Secondary Education Division #1 (ESED #1).

In Case Nos. 20 and 25, the Deputy RD signed off on the file copy 1 day after the LOF due date. The ARD commented that the Deputy RD "admitted that his dates on the sign-off appeared to be inadvertent." The sign-off date in Case No. 25 was March 8, 1986, a Saturday. The Deputy RD stated that he did not work on that Saturday. (IV-RD-5) The same comment was offered with reference to Case No. 46.

The file in Case No. 43 contained no file copy of the LOF with sign-offs. The ARD commented that the file copy appears to have been misplaced. In Case No. 48, the file copy of the LOF has no sign-offs. The ARD commented that there is no explanation but offered that the last page of the LOF may have been retyped, and "the need for new sign-offs may have been overlooked." (IV-RD-5)

In Case Nos. 32 and 38, the date of the LOF in the case file is the day after the LOF issuance date, as entered in ACIMS. The ARD commented that in both cases, the ARD had signed the letters on May 7, 1986, after clerical staff had left for the day. The ARD stated that a secretary who worked on Saturday, March 8, and who was instructed to mail the letters, inadvertently dated them March 8, 1986.

Incorrect LOF due dates were recorded on the Case Control Forms in the files of Case Nos. 25, 33, 34, 36, 37, and 39. The ARD commented that with regard to all cases except No. 39, the ESED #1 staff calculated the due dates and the Division Director "could not provide an explanation for the difference." (IV-RD-6) With reference to Case No. 39, the ARD commented that apparently the EOS inadvertently failed to place a complete CCF in the file before filing it in central records. A complete CCF was submitted to PRMS when the case was closed.

In the tolling subject area, in Case No. 60, a toll initiated in account of denial of access was continued beyond the date information was provided. The ARD commented that "in the review of this matter by the Division Director, no explanation was given . . . ." (IV-RD-6)

The ARD commented further that he has taken steps to ensure that tolling is implemented in accordance with the *Adams* order, and specified the steps that he has taken, including a review of files conducted in August 1986.*

The ARD commented that he had initiated a logging system for correspondence coming to his Office.

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*In a memorandum to Regional Civil Rights Directors of July 28, 1986 (attached as Appendix XIX), the Acting Assistant Secretary emphasized the need to ensure that the tolling provisions of the *Adams* order were implemented appropriately. The ARD in Region IV established a task force within the Region to review closed cases that had been tolled in the period July 1, 1985, to June 30, 1986. The ARD reported that the Regional task force reviewed 110 cases during the week of August 11, 1986, finding that 80 percent of the cases reviewed had been tolled incorrectly. Among the reasons that the ARD's task force regarded a case as having been tolled incorrectly were: (1) the case had been tolled before the development of the investigative plan; (2) there was no documentation in the file to document the basis for the initiation of a toll or explain its basis; (3) the case had been tolled from the date of the acknowledgment letter; (4) an *Adams* criterion had been inappropriately applied; (5) a toll had been continued beyond the time a witness became available; or (6) a toll had been initiated prior to the time a witness became unavailable. The ARD's report of his task force's findings is an attachment at Appendix IV, and is discussed in the Analysis section of this Report, below at 57 and 58.

Region V

The original sample consisted of 71 cases, of which 70 were reviewed.

The sample included 23 cases to be reviewed in the acknowledgment subject area. All cases were readily available. Twenty of the 23 cases appear to have been received directly from complainants. Three others were referred from the Office of Special Education and Rehabilitative Services (OSERS). Twenty-two of the 23 complaints were logged in immediately upon receipt. In one of the cases referred from OSERS (No. 17), there was a delay in recording the matter as a complaint, as the Region challenged the appropriateness of the referral and sought and received further guidance from headquarters. (V-2)

None of the cases reviewed in the acknowledgment subject area had sign-offs after the date of issuance, as recorded in ACIMS. One date was illegible and incomplete. No inconsistencies were found between the acknowledgment date as recorded in ACIMS and the actual date of the letter in the case file. (V-4) It was noted that attorneys do not review and sign off on acknowledgment letters in this Region.

The sample included 39 cases to be reviewed in the LOF subject area. Thirty-eight cases were reviewed.

In 36 cases, all the sign-offs on the file box copy of the LOF were dated before the Adams due date. In Case No. 38, although the sign-offs of the attorney and the Chief Civil Rights Attorney are 3 days after the LOF due date, both attorneys indicated that the LOF had been approved in substance on 10-21-85.* In Case No. 36, the RD's sign-off is 1 day after the LOF due date. (V-9)

Case Nos. 53 through 62 all had docket numbers indicating that they were the responsibility of the Cleveland Office. Except for Case No. 36 discussed above, in all instances the RD, other Chicago personnel, and Cleveland personnel signed off on the LOFs on the same day. The LOFs issued in Cleveland bore the signature of the RD.

The sample included nine cases to be reviewed in the tolling subject area (Nos. 24 - 32). All cases were readily available.

Three cases (Nos. 29, 31, and 32) were tolled a total of 6 times on account of witness unavailability. A review of these tolls does not suggest any inappropriate application of the Adams tolling provisions. (V-5)

Three cases were tolled on account of pending litigation (Nos. 24, 25, and 26). Each toll had been approved by the Acting Assistant Secretary as required by the Adams order and OCR procedure. Each file documents that the Region is monitoring the litigation so that it can commence appropriate action at the conclusion of the litigation. All aspects of these tolls are consistent with the *Adams* order provisions for such cases. (V-5)

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*In this case, the Cleveland ESED Director signed off for the RD. The team noted the lack of a uniform format (i.e., convention) when staff were called on to sign off for other staff. In some instances, the team found a signature with an indication that the signatory was "Acting for Jones." In other cases, it was just "Smith for Jones." The lack of a uniform convention to be used in signing off in the place of other staff was apparent in other Regions as well.

Four cases (Nos. 25, 27, 28, and 30) were tolled a total of five times due to denial of access. In all instances, the tolls were approved with a retroactive start date. There was usually a 1 month lag between the start of a toll and actual approval, although in one instance (No. 28), 80 days elapsed before the toll was approved. (V-6) In all cases, the initiation of the tolls was appropriate. In all cases, the time frame for initiating enforcement has been missed.* Although observing that tolling decisions are "highly subjective and ripe for challenge," the team found no evidence that these four cases had been tolled inappropriately. (V-6)

Case No. 25 was originally tolled on account of denial of access and later because of pending litigation. The review yielded no evidence that either toll was inappropriately entered. Case No. 25 remains tolled on account of denial of access. As it has not been referred to headquarters for enforcement, the *Adams* time frame for initiating enforcement proceedings in such cases has been missed.

In Case No. 27, two tolls were entered on account of denial of access. The first toll was initiated as of the date the recipient challenged OCR's jurisdiction and refused to provide data. The toll was ended on February 3, 1986, because the recipient provided the information. However, on March 28, 1986, the Division Director (DD) requested that the toll be reactivated because the recipient refused to provide data requested on March 14, 1986. That request was approved and the toll entered effective February 3, 1986, the date the first toll ended. (V-6)

Case No. 28 was tolled on December 11, 1985, as of September 23, 1985, on account of denial of access. The toll is still in effect. The recipient refused to provide data, asserting that OCR lacked jurisdiction in the matter due to *Grove City*.** On July 25, 1986, this case was referred to headquarters for enforcement. The *Adams* time frame for initiating enforcement proceedings has been missed.

In Case No. 30, a toll was initiated on account of denial of access as of December 3, 1985, and is currently in effect. On October 25, 1985, OCR sent its data request to the recipient, and on November 20, 1985, a partial response

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*Special enforcement time frames apply to cases tolled on account of denial of access. March 11, 1983, *Adams* order at paragraph 19(d), above at 6. Generally, failure to meet an enforcement time frame (or any single time frame) in an individual case is not a violation of the *Adams* order. The order provides that "exceptional" time frames will apply to not more than 20 percent of the complaints received in any fiscal year. The exceptional time frames provide OCR with 345 days within which to initiate enforcement in a limited number of cases.

***Grove City v. Bell*, 464 U.S. 555, 104 S. Ct. 1211, 79 L.Ed.2d 516 (1984) In *Grove City*, the Supreme Court held that where a college's receipt of Federal financial assistance is limited to student financial aid, the Department's civil rights jurisdiction is limited to the student financial aid program.

was received. On December 12, 1985, OCR telephoned the recipient requesting further response, and on January 15, 1986, OCR sent a letter reiterating the request. On January 15, 1986, the recipient advised OCR that it would make no further response to OCR's data request. The toll was requested on January 8, 1986, and approved on that date. Initiation of the toll appears to have been appropriate, but the time frame for initiating enforcement proceedings has been missed. (V-8)

Regional Director's Response

With respect to Case No. 17, one of the referrals from OSERS, the RD stated that the Region did not log the case in initially because it did not believe that the referral was appropriate and so advised the former Assistant Secretary (AS) on August 8, 1985. On September 10, 1985, the Region received a memorandum from the former AS stating that he disagreed with the Region's position and instructing the Region to begin an investigation. The RD stated that in the absence of an IPM provision addressing this situation, the Region used the date it received the AS' memorandum as the date of receipt. Later, in April 1986, the Acting AS determined that the case should be processed by OSERS, and it was administratively closed and returned to OSERS.

The RD stated that the Region had developed "form" acknowledgment letters which had been fully reviewed by the Chief Attorney. Although attorneys fully review all jurisdictional determinations and other substantive intake matters, the Region does not require attorney review of routine acknowledgment letters that adhere to the previously approved format. (V-RD-3)

The report stated that a sign-off on an acknowledgment letter in Case No. 12 was illegible and incomplete. The RD stated that the Division Director used ditto marks to indicate that the date he signed off was the same as the Branch Chief.

With reference to the LOF subject area, the review report stated that in all but two cases (Nos. 36 and 38), all file box sign-offs were dated on or before the LOF due date. With respect to Case No. 36, the RD stated that on January 7, 1986, he reviewed the letter and gave his approval over the telephone to the Cleveland Office. The RD stated that the Cleveland staff member apparently dated his approval incorrectly.* (V-RD-11) With respect to Case No. 38, the RD stated that the ESED Director who was serving as Acting Deputy Regional Director, stayed late in the Office on the evening of October 21, 1985, to review and sign the LOF on behalf of the Acting RD. This was accomplished but the ESED Director neglected to date the file copy. On October 23, 1985, the file copy was presented to the attorney and Chief Attorney for sign-off. Both dated their sign-offs "10-23" but noted that the LOF was approved in substance on October 21, 1985.

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*In a memorandum of August 14, 1986 (at Appendix V), the RD explained the process whereby LOFs mailed from Cleveland are cleared by Chicago personnel. He stated that after ESED in Cleveland is notified of any changes in the LOF required by attorneys in Chicago, Cleveland ESED types the LOF in final form and submits it by electronic mail to Chicago where it is reviewed again. As soon as the RD approves the LOF, he notifies the Cleveland ESED Director by telephone. The letter is "immediately dated, signed for the Regional Director, and mailed . . . ." The Cleveland ESED Director notes all dates of approval on the file copy of the LOF.

In Case No. 27, the report questioned the initiation of a toll on March 28, 1986, but as of February 3, 1986. The RD explained that the case was first tolled on October 29, 1985, when the recipient asserted that OCR lacked jurisdiction and indicated that it would not respond to OCR's data request. On December 24, 1985, OCR requested that the recipient provide data regarding the Federal financial assistance (FFA) received, and on February 3, 1986, the recipient provided the FFA information. On that date, the toll was lifted. However, OCR reiterated its original October 29, 1985, data request, but the recipient refused to provide that data. The toll was reactivated on that basis. (V-RD-6)

With reference to the Region's delay in initiating enforcement in cases tolled on account of denial of access (e.g., Nos. 27, 28, and 30), the RD stated that delays were substantially attributable to the Region's efforts to comply with OCR's authority to initiate enforcement in denial of access cases. (V-RD-6) The RD pointed out that in each of the cases, tolling was initiated because of a recipient's refusal to grant access to information regarding jurisdiction and substantive issues. (V-RD-7)

The RD stated that "under the Adams order and the IPM, however, a recipient's refusal to provide access is not a sufficient basis, standing alone, for referral for and initiation of enforcement." (V-RD-8) The RD stated that "the Adams order requires, as a qualification upon OCR's enforcement authority, that the information sought be necessary" and that the failure to acquire the information prevents an investigation from going forward. The RD stated that he and his Chief Attorney interpret Adams and § II-2-2.142 of the IPM as requiring OCR to exhaust all alternative sources of information and conclude that the information sought from the recipient is not available from any other source before it may initiate enforcement. (V-RD-9) The RD then described in detail the efforts of Regional staff to obtain information from other sources which the recipients in Case Nos. 27, 28, and 29 had refused to provide. With reference to Case No. 28, the effort took nearly 3 months.

Throughout his response, the RD identified steps he is taking to improve recordkeeping and monitor case management generally.

Region VI

The team reviewed 54 case files.

Nineteen case files were reviewed in the acknowledgment subject area. The file of an additional case which had been identified for review in this area could not be located. No evidence of discrepancies that would raise concerns about compliance with the Adams order was found in 17 of the cases. As no logs or other records of clearance of LOFs were maintained by the Region, this conclusion is based on the dates of the letters in the files and the sign-off dates on the file copies. However, in two cases, there were no file copy sign-offs, and in four cases, the sign-offs were undated.

In one case (Case No. 34), the letter issued to the complainant on the acknowledgment due date was a letter forwarding a complaint withdrawal form, and in another case (Case No. 42), the letter issued to the complainant on the acknowledgment due date was a notice that OCR was reviewing the case to ascertain whether it should be referred to EEOC. Neither of these letters contained the required elements of an acknowledgment letter.

The team reviewed 26 cases in the LOF subject area, one of which originally had been selected for review in another subject area; the files of two other cases identified for review in this area could not be located. In eight of these cases, no discrepancies indicative of backdating were found. In five of the cases, one discrepancy was found. The discrepancies identified in these cases involved a sign-off dated subsequent to the date of the LOF (Case No. 13), dates of attorney sign-offs changed from dates subsequent to the dates LOFs were issued to the LOF issuance dates (Case Nos. 3 and 17), the date of an LOF to a complainant changed from a date subsequent to the date the LOF was due to the Adams due date (Case No. 19), and an indication in Attorneys Staff records that an LOF was cleared subsequent to its issuance date (Case No. 6). (VI-3)

In 13 additional cases, two or more indications of possible inaccurate dating were found. In eight of these cases (Case Nos. 4, 5, 12, 18, 21, 22, 24, and 48), either the Attorneys Staff log or a file memorandum from the attorney indicates LOF approval after the date the LOF was due and dated, and the date of at least one sign-off on an LOF file copy is after the date the LOF was due and dated. In the remaining five cases (Case Nos. 7, 15, 20, 23, and 25), more than one discrepancy was noted based on records maintained or generated either by the Attorneys Staff or a Program Division. However, none of these cases demonstrated sign-offs on LOF file copies after the LOF issuance date. (VI - 3, 4)

Fourteen cases were reviewed with respect to tolling of Adams time frames; all were tolled due to witness unavailability. With the exception of a few cases where tolling was approved by a Division Director or the Deputy RD, the files did not reflect supervisory approval of tolling; in no case was tolling approved by an attorney. In all 14 cases, the file did not support the tolling start date and/or the tolling end date. Some files (Case Nos. 29 and 44) contained no explanation as to the identity of the unavailable witness. Others (Case Nos. 14, 22, 50, 51, and 53) identified the witness and the date the witness would first be unavailable, but the tolling started well before that date. Some files (Case Nos. 14, 22, 46-48, and 50-54) identified the witness and the date the witness was expected to become available but tolling did not end until several months after that date in most cases. A number of these files contained indications that the cases remained on tolling status because of jurisdiction questions raised by Pickens.* Two cases were tolled because the recipients requested that OCR postpone its on-site visit. Another was tolled because the complainant was considering adding more allegations. (VI-6, 7)

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*In the Matter of Pickens County School District, No. 84-IV-11 (October 28, 1985) In Pickens, the Reviewing Authority applied the holding of the Supreme Court in Grove City to elementary and secondary education programs. The Reviewing Authority held that receipt of funds under the Education Consolidation and Improvement Act provides the Department of Education with jurisdiction in programs assisted by those funds, rather than in the entire elementary and secondary education program operated by the school district.

Regional Director's Comments:

With respect to acknowledgment letters, the RD commented on the two cases for which the team had found that the letters issued on the acknowledgment due dates did not constitute acknowledgment letters. Regarding Case No. 34, the RD responded that 1 week after the complaint was received, the complainant advised OCR that he wished to withdraw his complaint. The Region therefore issued a letter forwarding complaint withdrawal forms. The RD stated that use of this letter to acknowledge the complaint was improper and also noted that the complaint was improperly closed before receipt of the withdrawal forms. With respect to the other case (Case No. 42), the RD stated that the letter notifying the complainant that the case was being reviewed to ascertain whether it should be referred to EEOC was sent rather than the standard acknowledgment letter, because it was obvious to PRMS staff that the complaint would be referred to EEOC as soon as it was reviewed by the attorney who served as EEOC liaison.

The RD offered specific explanations for discrepancies relating to issuance of LOFs in 10 of the 18 cases where such discrepancies were noted by the team. Discrepancies noted in attorney logs and/or sign-offs with respect to Case Nos. 6, 20, 21, 23, 24, and 48 were explained by the RD as resulting from pre-LOF informal clearance or post-LOF sign-off. The RD explained that the Attorney Staff records are designed to determine the date that documents are transmitted and not to show the date documents are approved. The RD stated with respect to these cases that the attorney orally approved each LOF before the Adams due date with the understanding that written comments and approval would be transmitted at a later date. The LOFs were then issued and the written attorney comments were transmitted to the Program Divisions after the dates of LOF issuance. In some instances, staff members who had orally approved the LOFs were absent on the dates that they were actually issued; they signed the file copies of the LOFs after the LOF issuance dates. In Case No. 3, the EOS and attorney were absent when the LOF was issued, and both signed off on the file copy on a later date; after dating the file copies with the date they actually signed off, they modified the dates to reflect the date they had actually approved the LOF.

The RD explained a sign-off discrepancy relating to one case (Case No. 17) as an inadvertent error by a staff member in dating a file copy sign-off; when the staff member noted the error, it was corrected. Staff error was also the explanation offered for the changed date on the file copy of an LOF to a complainant (Case No. 19). With respect to two cases where the Deputy Regional Director's sign-offs on the LOFs were dated after the LOF issuance dates (Case Nos. 13 and 48), the RD explained that the Deputy reviewed these cases several days after the LOFs had been issued as part of a Regional post-closure quality assurance process.

No explanation was provided for eight cases (Case Nos. 4, 5, 7, 12, 15, 18, 22, and 25) for which the team had identified more than one discrepancy. The RD stated that he was "unable to reconstruct events adequately for eight of the identified cases to determine the reasons for the facial discrepancies." Instead, he provided a general explanation of policies and practices relating to adherence to the Adams order. He stated that staff submit with every LOF for his signature a notation of the Adams due date, and, as he recalls, this has consistently been the same date as the date of transmission. He stated that he has therefore "never had any reason to question the integrity of the Adams dates as reported to me or to compare them with ACIMS records." He also stated that he has consistently instructed his staff to maintain the integrity of adherence to Adams due dates and ACIMS reporting. (VI-RD-1).

The RD provided specific responses with respect to the team's comments regarding many of the 14 cases reviewed by the team for adherence to the tolling provisions of the Adams order. The RD provided an explanation for the tolling of one case (Case No. 52) beyond the period the witness was originally expected to be absent, indicating that the witness was transient and not available for an interview for an extended period of time. With respect to other cases, the RD stated that problems noted by the team generally resulted from misconceptions by staff as to when tolling should be initiated and when it should be ended. In one case (Case No. 14), the RD noted that the case had been tolled as of the date the Region was notified that the witness would become unavailable rather than the date that the witness actually became unavailable. The RD stated that this resulted from a misunderstanding by staff as to when tolling should be started.

With respect to a number of cases (Case Nos. 14, 29, 44-47, 49-51, 53, and 54), the RD noted that cases had remained on tolled status beyond the period of the witnesses' unavailability due to a misconception by staff that once a case had been tolled for witness unavailability, it should remain tolled until the on-site began. According to the RD, a number of cases originally tolled for witness unavailability remained on tolled status due to jurisdiction problems resulting from the Pickens decision or other policy and legal considerations (Case Nos. 14, 44, 45, 47, and 49-51). The RD stated that since it had been the usual practice in the Region to begin the on-site the first day that the witness becomes available, in many cases the tolling end date and the date of the on-site have been the same. He stated that the relationship between these two dates evolved into a misconception by staff that the tolling should not be ended until the on-site started (VI-RD-2).

Region VII

The team reviewed 48 case files.

Six case files were reviewed with respect to the acknowledgment subject area, one of which had been added by the team to the original sample. No discrepancies were noted with respect to five of these cases. In one case (Case No. 30), the letter sent to the complainant states that there is a jurisdictional problem but does not contain the components of an acknowledgment letter; no notification letter to the recipient is contained in the case file.

The team reviewed 36 cases with respect to LOFs, noting no discrepancies with respect to 17 of the cases. In three instances (Case Nos. 2, 33, and 36), the team could not locate a copy of the LOF in the file provided for review. In Case No. 36, the LOF is dated on a Sunday, and a memorandum approving the findings, with revisions, is dated 2 days after the date of the LOF. The memorandum contains a footnote stating that the Chief Attorney had approved the LOF on the Friday before the due date, with revisions. The corrective action plan forming the basis for the closure is date-stamped as having been received the day after the date of the LOF; however, this date has been changed to the Friday before the LOF date.

Three cases (Case Nos. 32, 34, and 35) have dates of final revisions by typists which are 1 day after the dates of the LOFs. In Case No. 35, a sign-off by the RD's secretary is dated 1 day after the date of the LOF. An LOF to a complainant regarding nine related cases (Case Nos. 7-15) and three of the recipient LOFs pertaining to this group of cases contain a sign-off dated 1 day after the date of the LOF, as do the LOFs in two additional cases (Case Nos. 17 and 30). On the file copy of the LOF in one case (Case No. 27), all sign-offs are dated 1 day after the date of the LOF. In one case (Case No. 25), the date of an attorney's sign-off appears to have been changed from a date after that of the LOF to the date of the LOF.

Eight cases were reviewed with respect to tolling. Five were tolled due to pending litigation with approval of the Acting Assistant Secretary; in one case (Case No. 44), tolling continued for approximately 3 weeks after the Region became aware of closure of the litigation. One case was tolled for denial of access. Two cases were tolled for witness unavailability. One of these cases (Case No. 46) was tolled during an on-site when the recipient did not make certain witnesses available, and tolling was ended on the second day of interviewing of these witnesses. The file of the other case (Case No. 47) did not contain documentation of the reasons for tolling. The files did not reflect a regional procedure for supervisory or attorney review of tolling.

Acting Regional Director's* Comments:

With respect to the issuance of acknowledgment letters, the ARD commented on the team's discussion relating to Case No. 30. The ARD stated that until the recipient sent information about Federal financial assistance received by the program which was the subject of the complaint, the Region believed the complaint would be closed due to lack of jurisdiction and therefore sent only a short acknowledgment letter explaining that jurisdiction could not be immediately established. The recipient was contacted by telephone regarding information needed to determine jurisdiction and was later sent a written data request. (VII-RD-5, 6)

Regarding the absence of LOFs in the case files of three cases (Case Nos. 2, 33, and 36), the ARD stated that the LOF in Case No. 2 was in fact in one of the three files related to this investigation but that this file was not reviewed by the team. The ARD said that LOFs for the other two cases were absent from the files as a result of administrative oversight, but copies of the LOFs were in the Region's reading files. With respect to Case No. 36, the ARD stated that the corrective action plan had been picked up by a staff member on the Friday before the Adams due date and the contents of the plan had been read over the telephone to staff members in the office. When the staff member arrived in the office the following Monday, the plan was date-stamped as of that date. However, the Region subsequently determined that since the corrective action plan had actually been received by a staff member the previous Friday, the receipt date should be changed to that date. (VII-RD-1, 4, 5)

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*The ARD assumed her position on March 17, 1986.

With respect to indications by typists that LOFs in Case Nos. 32, 34, and 35 had been finally revised 1 day after the dates of the LOFs, the ARD stated that the only explanation which could be offered was that the typists entered the incorrect date. The instance where the RD's secretary dated the sign-off of one of these letters 1 day after the date of the LOF (Case No. 35) was also believed to be an error. (VII-RD-2)

With respect to the complainant's LOF in Case Nos. 7-15, the ARD stated that the sign-off by the Division Director 1 day after the date of the letter is attributable to error. The ARD noted that although the team found that three of the nine recipient letters show a sign-off 1 day after the date of the LOF, in fact only one of the recipient LOFs shows such a discrepancy. With respect to sign-off discrepancies noted by the team with respect to three additional cases (Case Nos. 17, 25, and 30), the ARD stated that these dates were apparently errors. No explanation was provided for the instance in which all sign-offs were dated subsequent to the date on the LOF (Case No. 27), although the Region noted that the corrective action plan on which closure was based had been read to OCR by the recipient over the telephone before the LOF due date, and a decision had been made to close the case before receiving the written plan. (VII-RD-2-4)

With respect to one of the cases tolled due to pending litigation (Case No. 44), the ARD indicated that the tolling had not ended on the date reported by the team but was still in effect when the team reviewed the file. The ARD stated that the extended tolling was incorrect and that the correct tolling start and end dates have been entered into ACIMS. The ARD also noted that the tolling end date for one of the cases tolled for witness unavailability (Case No. 46) ended 1 day later than was appropriate.

With regard to the other case tolled for witness unavailability (Case No. 47),. the ARD stated that a second file pertaining to the case contained a memorandum requesting tolling because a witness would be on sabbatical for an extended period and tolling due to denial of access, and that the tolling was approved by the RD. With respect to the team's comments that the Region continued to conduct investigative activities during the pendancy of the toll, the ARD stated that "in an effort to meet the Adams time frames, all investigative activities that could be were completed during the toll."* After the witness was interviewed, the toll continued for another month due to a denial of access issue. (VII-RD-8)

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*The Adams order permits tolling of time frames when, because of the extended absence of a witness, OCR ". . . is unable to complete the investigation or negotiation within the timeframes . . . ." A footnote to a March 7, 1984, memorandum from the former Assistant Secretary to Regional Directors interprets this provision as follows: ". . . a case can be tolled for witness unavailability if the remaining component of an investigation is obtaining testimony from a material witness or if negotiations are dependent on the testimony of such a witness. A case cannot be tolled because a witness is unavailable for questioning on one aspect of investigation or negotiation, if the investigation or negotiation can proceed in other areas." (See above at 5 and 6)

Region VIII

The team reviewed 17 cases in the LOF subject area. No cases were reviewed with respect to acknowledgment or tolling.

No discrepancies were noted by the team with respect to five cases.

The team reviewed eleven interscholastic athletics cases filed by a single complainant which all had the same Adams due date. A common discrepancy was noted with respect to ten of these cases (Case Nos. 2-6 and 8-12). In each case, OCR was engaged in negotiations with the recipient before the Adams due date. On the Adams due date, the Region closed each case. In eight of these cases, the file contained a closure letter to the recipient which was issued on the Adams due date. In two of the cases, this letter referred to either a written or oral commitment by the recipient as forming the basis of the closure. In the remaining six cases, the letter did not reflect that a commitment had been made to the Region. Formal letters of findings in these ten cases were issued 8 to 15 days after the Adams LOF due date.

A discrepancy also was noted in the remaining interscholastic athletics case (Case No. 7), in which a finding of compliance was made. According to ACIMS, the LOF was issued on the Adams due date. The file copies show sign-offs by three staff members which were originally dated 3 days after the Adams due date but were changed to the Adams due date; one sign-off is dated 3 days after the Adams due date. The date of a record of a telephone contact with the complainant regarding adverse findings has been changed from 1 day after the Adams due date to the Adams due date.

In another case (Case No. 17), all sign-offs on the LOF are consistent with the date on the LOF and the date entered into ACIMS. The LOF references a corrective action plan submitted by the recipient. The plan is dated 1 day before the Adams due date and is entered in the correspondence log as having been received on that date; it is entered in this log out of sequence, between entries for correspondence received one and 2 days after the Adams due date. The file copy of the LOF indicates it was typed 1 day after the Adams due date. The letter was signed by a Division Director as Acting Regional Director.

Regional Director's Comments:

The RD stated that the 11 interscholastic athletic cases presented a monumental task for the Region. The Region was short two EOSs due to their detail to Region IV and had only two secretaries available for typing the Investigative Reports, pre-LOF negotiation letters, and LOFs. The RD stated that the "Adams Order requires that a determination of compliance or non-compliance should be made in writing within 105 days of receipt of a complete complaint. In these eleven cases, a determination of non-compliance was made for ten of the districts before the 105th day (November 12, 1985) and each district was notified both orally and in writing of OCR's findings. Though these initial non-compliance letters were not the formal LOF, they were written to advise the districts of their non-compliance in an attempt to achieve a corrective action commitment prior to the 105 day time frame. All of the districts found in non-compliance orally committed to some sort of corrective action prior to November 12, 1985. Because of the short time span from oral commitment, to written notice by OCR and the written commitment by the Districts, the formal LOFs could not be processed and mailed by November 12, 1985." (VIII-RD-1)*

With respect to the athletics case in which compliance was found (Case No. 7), the RD stated that the LOF was not mailed on the Adams due date as reported in ACIMS. The RD stated that the attorney recalls signing off on the LOF 3 days after the Adams due date and the date of his sign-off has been changed without his approval; the date of the RD's sign-off has been inserted by the former Division Director. The RD stated that a former secretary has stated that she was told by the former Division Director to date the U.S. Postal Service Return Request Receipt the date of the Adams due date rather than the actual date the LOF was mailed, which was 3 days after the Adams due date. Also, according to the RD, the telephone call to the complainant to provide adverse findings actually occurred the day after the Adams due date.

With respect to the final case in which a discrepancy was noted (Case No. 17), the RD stated that the corrective action plan was picked up from the recipient by a staff member before the Adams due date; the LOF had been submitted to the attorney for review several days earlier and was held up only because the Region was awaiting the corrective action plan. The secretary who typed the letter stated that she could have made an error on the date indicated on the file copy as the date the LOF was typed. Since the RD was not in the Region when this LOF was issued, he is not certain why the Division Director signed for the ARD but speculates the ARD must have been out of the office or have gone home when the LOF was mailed. The RD stated that he is certain the EOS, branch chief, and attorney assigned to this case would not have backdated the LOF under any circumstances.

Region IX

The team reviewed 87 cases.

Twenty-nine cases were reviewed in the acknowledgment subject area; the file of another case included in the sample could not be located. With the exception of four cases, file copy clearances and attorney records did not evidence attorney review of acknowledgment letters. Discrepancies were noted with respect to acknowledgment letters issued in three cases. In Case No. 5, clearances are dated 1 day after the date of the letter. Since the date of the letter is 1 day before the Adams due date, however, this discrepancy has no effect on compliance with the Adams time frames for this case. In Case No. 12, an attorney's file copy sign-off is dated 4 days after the date of the letter, and in Case No. 18, the Division Director's file copy sign-off is dated 2 days after the date of the letter. The dates of the acknowledgment letters in these two cases are the same as their Adams acknowledgment due dates.

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*The 1977 Adams order, at Paragraph 15 (b) (1), requires OCR to make a written determination as to whether a violation has occurred within 105 days of receipt of a complete complaint. At Paragraph 11, the order states that once OCR determines whether a violation has occurred, OCR must notify the complainant and recipient through a Letter of Findings. The LOF must address all allegations and issues raised by the complainant and during the investigation and must set out OCR's conclusions regarding each allegation and issue, supported by an explanation or analysis of the relevant information on which the conclusions are based. Section II, 6.1 of the IPM states that the LOFs must be issued within the 105-day time frames.

In one case (Case No. 2), the receipt date recorded in ACIMS is 15 days before the receipt date recorded in the PRMS log. In another case (Case No. 13), the completion date recorded in ACIMS is 15 days after the information needed to complete the complaint was received.

The team reviewed 20 cases with respect to issuance of LOFs. Two additional cases included in the sample were not reviewed; the team omitted one case from the review, and the file of the other case could not be located.

Discrepancies relating to clearances recorded in attorney records and/or file copy sign-offs were noted in seven cases. In Case Nos. 69, 70, 78, 80, 84, 85, and 87, one or more file copy sign-offs (including that of the ARD in five of the cases) are dated after the date of the LOF. In two of these cases (Case Nos. 69 and 87), attorney records indicated clearance one or 2 days subsequent to the LOF issuance date; in Case No. 80, a clearance date 2 days later than the LOF issuance date has been crossed out of the attorney log and replaced with a date which is the same as the LOF date.

Discrepancies also were noted in two other cases. ACIMS indicates that the LOFs in both cases (Case Nos. 34 and 77) were issued on their Adams LOF due dates. Based on review of the copies of LOFs contained in the case files, the recipient's LOF in Case No. 34 and the complainant's LOF in Case No. 77 were issued on their Adams due dates. However, the complainant's LOF in Case No. 34 and the recipient's LOF in Case No. 77 were issued 6 days after their Adams LOF due dates.

The team reviewed 54 cases with respect to application of the tolling provisions of the Adams order. These included 40 cases included in the LOF sample and 14 cases included in the sample for other subject areas.

Of the 54 cases, 53 had been tolled due to witness unavailability. The remaining case was tolled due to court order, with the approval of the Acting Assistant Secretary. Ten of the 53 cases were tolled twice, and 5 were tolled 3 times. The files of some of these cases showed approval by a Division Director or the ARD; 21 case files contained no documents explaining the tolling or seeking supervisory approval for tolling. In no instance was tolling approved by an attorney.

Some of the instances of tolling were due to the absence of specific witnesses, the identity of whom can be ascertained from the case files. In some instances, however, the reasons for the length of tolling cannot be ascertained. Case No. 31 was tolled twice, apparently due to the fact that the Special Education Director was on vacation during August 1984 and July 1985; however, each instance of tolling lasted approximately 10 months (August 1, 1984 - June 4, 1985, and July 10, 1985 - May 12, 1986). In Case No. 43, the Region tolled the case for 8 months due to the absence of three handicapped individuals allegedly denied services. These individuals are not listed in the Investigative Plan, and the file contains no information explaining attempts to locate them or indicating that they were ever interviewed.

Several cases were tolled due to the absence of a recipient's attorney. For example, Case No. 58 was tolled for 3 months due to the inability of the recipient's attorney to review the response to OCR's data request. However, the recipient provided the requested information while the toll was in effect. A number of cases were tolled due to delay by the recipient in responding to a data request or in meeting with OCR for pre-LOF negotiations (Case Nos. 16, 20, 28, 29, 32, and 71). In Case No. 32, for example, during a meeting in June 1985, the recipient advised the Region that it was unable to provide additional documents until the Superintendent returned from vacation; the case was tolled for 1 year, from May 28, 1985, until May 30, 1986.

Several cases were tolled due to absence of the complainant (Case Nos. 52, 53, 59, and 60). Case No. 52 was tolled for a month and a half because the complainant failed to respond to a message that the Region had called to discuss preliminary adverse findings. Case No. 59 was tolled for 2 months because the complainant had temporarily left the state. During the period of tolling, the Region telephoned the complainant to advise her that the case would be tolled until she returned to California.

A large number of cases were tolled for witness unavailability due to recipients' summer or winter recess. When this occurred, the period of tolling often continued beyond the normal period of such recesses. For example, in Case No. 14, the complainant was advised that the case would be tolled due to the holidays; this toll lasted from January 21, 1986, until May 1, 1986. Case No. 25 was also tolled for winter recess; this toll lasted from December 15, 1985, until April 17, 1986, during which time the recipient provided data requested by the Region. Case No. 34, tolled due to summer recess on June 13, 1985, remained in tolled status for 11 months, until May 15, 1986. Similarly, Case No. 35 was tolled on June 17, 1985, for summer recess and remained tolled for 11 months, until May 23, 1986. During the period of the toll, the Region discussed the case with the recipient, advised the complainant that the Region had taken some steps to resolve the complaint, and placed the case on the Enforcement Activities Report.

The Region continued to process many cases while they were tolled for witness unavailability (Case Nos. 29, 32, 33, 35, 37-39, 41, 43-45, 47-50, 53, 58-61, 65-67, 69, 71, 76, and 86). In Case No. 36, for example, the Region tolled the case from September 23, 1985, until May 5, 1986. During the period of the toll, the Region received the requested information, conducted interviews, and issued an LOF to the complainant; the LOF to the recipient was issued 1 day after the toll ended. In Case No. 41, the LOFs were issued 1 day after the 4 month toll ended, and in Case No. 44, the Investigative Report was transmitted to the Attorneys Staff for review during the period of the toll.

Acting Regional Director's Comments:

The ARD stated that due to limited legal staff resources, attorneys have been unable to review all of the acknowledgment letters developed by PRMS. He offered explanations for the three cases in which sign-off discrepancies were found. The ARD stated that the acknowledgment letter in Case No. 5 was incorrectly date stamped; although the date stamped on the letter indicated it was mailed 1 day before the Adams acknowledgment due date, the letter was in fact mailed on the Adams due date as indicated by the date of the sign-off. With respect to Case No. 12, the ARD stated that although PRMS had conferred with legal staff regarding the acknowledgment letter, it was initially agreed that attorney sign-off was not required. Subsequent to the issuance of the acknowledgment letter, the Region determined that the attorney who had reviewed it should sign off as there was no other indication of attorney clearance in the file. The ARD said that the team misread the date of the Division Director's sign-off on the acknowledgment letter in Case No. 18. He said that the date of the sign-off was the same as the date of the letter. (IX-RD-1, 2)

The ARD said that the receipt date recorded in ACIMS for Case No. 2 was incorrect. In fact, the complaint was received 15 days later than was indicated by the ACIMS entry. The ARD disagreed with the team's statement regarding Case No. 13, indicating that the completion date recorded in ACIMS is the same as the date the material needed to complete the complaint was received. (IX-RD-2)

With respect to the seven cases (Case Nos. 69, 70, 78, 80, 84, 85, and 87) where the review team found that some of the dated clearance signatures on the file copies reflected a later date than the dates stamped on the LOFs, the ARD stated: "I reviewed these seven case files and determined that there was a practice adopted by the Elementary and Secondary Education Division which accounted for the discrepancy in dates for these cases. This date stamping practice was established pursuant to the mistaken belief that the date stamp reflected the date when an LOF was typed and ready for issuance. I became aware of this practice by a recent Regional Quality Assurance Review and on September 12, 1986 instructed the Division Director, in writing, to take steps to ensure that this, under no circumstance reoccur."

The ARD also commented with respect to Case Nos. 34 and 77, where the team found that one of the LOFs in each case was issued 6 days after the LOF due date (and the LOF issuance date recorded in ACIMS). He stated: "This practice of issuing two LOFs existed only in the Elementary and Secondary Education Division. I directed the Division Director to take steps to ensure that issuance of letters of findings to the complainant and the recipient occur on the same date." (IX-RD-4)

With respect to tolling, the ARD responded to some of the comments of the team relating to specific cases. With respect to the team's comment that the files of 21 of the cases contained no documentation of supervisory approval or an explanation of the toll, he stated that his review of these files indicated that in some of them, an explanation of the toll was made and supervisory approval occurred (Case Nos. 34-36, 39, 45, 46, 67, and 76); however due to clerical error, the forms containing this information were not included in the files. The ARD stated that steps are being taken to ensure all files contain documentation and that he has issued a memorandum requiring supervisory approval of all tolls. With respect to three cases (Case Nos. 54 - 56) cited for failure to identify the key witnesses or the information they were to provide, he also noted that the Investigative Plan generally identified the witnesses but did not specify their names or the information they would provide. He stated that in the future, such information would be included in Investigative Plans. (IX-RD-2)

With respect to the team's comments regarding cases tolled due to the absence of complainants, the ARD stated that he believes tolling in Case No. 59 was justified. Although the Region was able to contact the complainant, who was out of the state, by telephone, an interview was not practical because she did not have with her supporting documentation and notes to which she needed to refer.

The ARD noted that the team had identified numerous instances in which the length of toll was improper. He categorized these as cases where the toll continued beyond the period of witness unavailability (Case Nos. 31, 32, 58, and 71), where the toll continued beyond the traditional periods for summer and winter recesses (Case Nos. 14, 25, 34, and 35), and where tolls continued for extended periods of time (e.g., Case Nos. 32, 33, and 45). The ARD stated: "My review of these cases shows that with few exceptions the original toll was correctly imposed. However office procedures did not provide for adequate monitoring of these cases to ensure that they would come off interrupt status in a timely fashion. The Region is now fully aware of this problem and is taking steps to ensure that the situation does not reoccur. Monitoring of tolled cases will take place continuously and at all supervisory levels." (IX-RD-3)

The ARD also discussed the team's comments relating to the continued processing of cases during periods of tolling. He stated that one case noted by the team (Case No. 29) was in fact taken off tolling status in a timely manner but the file did not reflect this. With respect to Case Nos. 65 and 66, he stated that the only activities which occurred were telephone calls to ascertain whether key recipient staff remained unavailable. The ARD further stated: "Nevertheless, there were instances in which cases were processed during the tolling period. While in no way minimizing the need for corrective action in this area, which is now being taken, it is my feeling that a liberal interpretation of what constitutes 'case processing' is in order. The Adams order provides that a case may be tolled for witness unavailability if the absence of a witness prevents OCR from completing an investigation. However, to my knowledge it does not prohibit case processing of any kind during the toll. I think it not unreasonable that some administrative processing (e.g., preliminary work on portions of an Investigative Report, typing of summaries of interviews already conducted) could occur within the terms of the Adams order." (IX-RD-3)

Region X

The team reviewed 34 cases.

In the subject area of acknowledgment, the team reviewed six cases, three of which were added to the original sample by the team. In each case, the dates of the acknowledgment letters were consistent with ACIMS data, and clearances reflected in the attorney logs and on the file copies of the letters were on or before the Adams acknowledgment due dates.

Five of the six complaints were determined to be incomplete on receipt. Four of these complaints (Case Nos. 1, 4, 21, and 22) were filed on the official OCR complaint form. In one case (Case No. 2), the Region advised the complainant that the complaint was incomplete but did not specifically advise what further information was needed to complete the complaint. In all five cases, regional staff acted promptly to advise the complainant that additional information was necessary, and four of the five were completed within 16 days of receipt.

The team reviewed 20 cases in the subject area of LOFs. No discrepancies were noted with respect to 12 of these cases. In eight cases, discrepancies were noted by the team. The file copies of four cases (Case Nos. 22, 23, 24, and 36) reflected at least one sign-off dated after the date of the LOF, and the attorney log indicated that the LOF in each of these cases was cleared 1 day after the date of the LOF. The file copies of the LOFs to the recipients and complainants in one of these cases (Case No. 22) were dated 1 day after the LOF issuance date as reflected in ACIMS although the photocopy of the signed LOFs in the file were dated consistently with the issuance date reflected in ACIMS. The sign-offs on the LOFs in three other cases (Case Nos. 20, 21, and 27) were all on or before the dates of the LOFs, but the attorney log showed that these LOFs were cleared after their issuance dates. Also, in Case No. 28, both the file copy and photocopy of the LOF to the recipient were dated 1 day after the LOF issuance date recorded in ACIMS as was the photocopy of the LOF to the complainant in Case No. 21.

Sixteen cases were reviewed with respect to tolling; eight of these cases had been tolled more than once. In all tolls, the ACIMS printout carried the code number "1" indicating that the toll had been initiated on account of "witness unavailability caused by extended absence." However, file documentation in one case (Case No. 7) showed that one of the tolls had been initiated due to pending litigation with the approval of the Acting Assistant Secretary. In 12 of the cases, it appears that the cases were tolled when the Region experienced some delay in provision of information or arranging of interviews by the recipient (Case Nos. 3, 4, 6-8, 11, 12, 14-18). In some cases, the file identified a particular person whom OCR had sought to interview but who was unavailable; file documentation did not always explain why the absence of the witness made it impossible for OCR to proceed with the investigation (Case Nos. 4 and 15). Several tolls were initiated during pre-LOF negotiations because the recipient needed time to evaluate proposed compliance plans (Case Nos. 5, 8, and 10). Generally, tolls ended promptly when the underlying bases had been addressed or eliminated, e.g., when OCR received the data that had been delayed, the witnesses became available, or the corrective action plans had been received.

Regional Director's Comments:

The RD noted that the team had found no discrepancies relating to acknowledgment letters. He stated that although the team had cited one instance where the notice to a complainant that a complaint was incomplete did not specifically indicate what information was necessary, the team had also noted that the Region enclosed a complaint form which was promptly completed, resulting in a determination that the complaint was complete. With respect to determinations of completeness, the RD did not specifically discuss the other cases reviewed by the team. However, he described the process by which incoming complaints are evaluated by PRMS, Attorneys Staff, and Compliance Division staff for completeness and jurisdiction, stating, "I am confident that the Region is consistently making fair, proper, and legally supportable decisions as to completeness of complaints." (X-RD-2)

With respect to the discrepancies noted by the team regarding LOFs in eight cases, the RD first discussed the attorneys log. The RD stated that the log is used to assess performance of legal staff and to record requests made of legal staff and the action taken. He said that it is difficult for the attorneys to maintain the log on a current basis due to lack of clerical support and activities are not always entered contemporaneously with the action recorded, resulting in occasional errors. The RD further stated, "I have no reason to doubt that the logs are generally accurate, but I cannot assume they are sufficiently reliable so as to raise serious questions about Adams compliance. This is particularly true in light of the minimal length of time noted in the apparent discrepancies (i.e., final attorney clearance was recorded just 1 day after the LOF due date on six cases according to the report.)" (Case Nos. 20, 22, 23, 24, and 36.) With respect to Case No. 27, where the team found an attorney log entry indicating the LOF was cleared 4 days after the date on the LOF, the RD stated that letter referred to by the log entry is a letter to another government agency forwarding a copy of the LOF for this case. (X-RD-5, 6)

With respect to the four cases with file copy clearances dated after the date of the LOFs (Cases No. 22, 23, 24, 36), the RD stated that "the Region did not maintain a separate log to reflect the date the LOFs were posted in the mails. Under the circumstances, it is not possible to accurately reconstruct precisely where the breakdown occurred that led to the apparent discrepancies in the records." He noted that although the file copy is usually signed off by the reviewing party at the time the final document is reviewed, on occasion the reviewer may not sign the file copy until a day or so after the final document has been approved. The RD said that there may be other explanations for the apparent discrepancies. He noted that the date stamped on the file copy of the LOF of Case No. 22 (which was different from the date stamped on the photocopy of the LOF) was "an apparent mechanical or clerical error." (X-RD-6)

With respect to the two cases having LOFs to the complainant and recipient with different dates (Case Nos. 21, 28), the RD stated: "It is the normal practice in the Region to issue recipient's and complainant's LOF's on the same date. However, there may have been some isolated incidents where the practice was not followed. For example, if the Adams due date was upon us and one letter was prepared and ready to issue, it would certainly be so issued even if typing corrections or clerical delays necessitated waiting until the next day to issue the other letter. This is not the standard practice, nor is it the most desirable way to proceed, but under the circumstances there may be no reasonable alternative. I do not believe such a practice is precluded by either the IPM or the *Adams* order. In any event, the length of the discrepancy in each case cited was just 1 day." (X-RD-6, 7)*

With respect to tolling, the RD noted that the report stated that ACIMS code "1" was entered for all tolls. He stated that "Regional staff involved in the ACIMS reporting process had a misunderstanding about the code numbers that were to be utilized for case interruption. Staff thought the only available code for tolling a complaint was Code #1. This admittedly resulted in some clerical or procedural errors with respect to the information reported on ACIMS."

With respect to the comments in the report regarding tolling under the "witness unavailability" code because of delays in obtaining information, the RD stated that in such cases, the investigation was delayed by factors outside OCR's control. He said that rather than tolling for witness unavailability under these circumstances, "the better interpretation would appear to be that such failures by recipients are more properly associated with the 'denial of access' tolling category."** The RD stated that since the IPM does not require documentation of the reasons for tolling, the files do not necessarily fully explain the reasons that cases were tolled. He stated, "The lack of full documentation makes it difficult to find fault with my staff on a substantive level. I believe they were making good faith efforts to adhere to the language of the *Adams* order and OCR policy . . . . The report certainly provides no indication that tolling was initiated where there was no underlying impediment to case processing outside OCR's control."

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*The 1977 *Adams* order at paragraph 15(b)(1) requires OCR to make a written determination as to whether a violation has occurred within 105 days of receipt of a complete complaint. At paragraph 11, the 1977 Order states that once OCR determines whether a violation has occurred, OCR must notify the complainant and the recipient through a Letter of Findings. OCR has consistently interpreted these provisions as requiring issuance of the LOFs to both the complainant and the recipient within the 105-day time frames.

**The RD appears to have interpreted the *Adams* order to permit tolling under the denial of access provision whenever there is a delay in obtaining information which is beyond OCR's control. However, the denial of access provision of the 1983 *Adams* order permits tolling only when ". . . an institution *refuses* to allow an investigation to be conducted, or *without good cause refuses* to supply records or other materials which are necessary, material and relevant and without which the investigation cannot go forward . . ." (emphasis added). (IPM II-2.141, cited above at 6)

III. ANALYSES* AND CONCLUSIONS

A. Acknowledgment Subject Area

1. Was there evidence that regional staff were not accurately recording and entering into ACIMS the date on which complaints were received by OCR?

In Region II, of 30 cases selected for review in the acknowledgment subject area, 28 of the 29 date stamped cases reflected the same receipt date as entered on the case control forms. Moreover, only one complaint was recorded as being received more than 10 days after the date on the complaint. This is not unusual and does not, by itself, create an inference of inaccurate record keeping.

In Region III, 27 of the 28 files examined in the acknowledgement subject area had complaints dated by the complainant. The receipt dates entered on the case control forms were generally within a few days of the date on the complaint. In seven cases, the difference was between 10 days to 2 months. No inferences can be drawn from this fact alone, since complainants occasionally do not mail complaints immediately. Moreover, the ARD was able to provide documentation or otherwise explained six of the seven cases and resolved questions about the receipt dates of the complaints.

The review report noted that 24 of,the 27 Region III complaints were date stamped. The ARD reported that the review team overlooked a date stamp on correspondence in Case No. 25 and that the failure to date stamp Case No. 17 was inadvertent -- it was one of 40 student health insurances cases filed on the same day. The date stamps in 23 of these 24 cases corresponded to the date of receipt as entered on the case control form. One file did not have a case control form.

In Region IV, each of the 19 complaints reviewed in the acknowledgement subject area was dated, and in 18 of the 19 cases, the average number of days difference between the date of the complaint and the date stamped on the back was within 1 week. In 17 of the 19 cases, the receipt date stamped on the back of the complaint corresponded to the receipt date entered on the case control form. However, one case (No. 18) was logged in 69 days after originally received. The ARD explained that this letter was not originally considered a complaint filed with OCR, but rather a copy of a complaint filed with a State agency. The Region was incorrect in assigning as the *Adams* receipt date, the date on which it concluded that the matter should be investigated by OCR.

In Region V, 22 of 23 complaints were immediately logged in as received. The differences between the dates on the complaints and the dates recorded in ACIMS were minimal. In one case, No. 17, which was a referral from OSERS, the Region delayed logging the case pending its challenge of the appropriateness of the referral. The RD explained that, "in the absence of an IPM provision on this matter," the case was subsequently logged as of the date of the former Assistant Secretary's memorandum resolving the matter. The IPM provides that complaint referrals from headquarters should be logged in as of the date of receipt by the Regional office. (IPM § I-1.31) The IPM does not specifically address what procedure the Regions should follow when disputing the nature of the referral itself. Moreover, it should be noted that, subsequently, the Acting Assistant Secretary agreed that the matter should be referred back to OSERS and the case was closed administratively. While the matter could have been logged in as of the date of the original memorandum from the AS, the RD's explanation may be regarded as acceptable.

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*Findings made in Region I are not analyzed here, in part because former Regional officials were not asked by the Acting Assistant Secretary to respond in writing to the review report. Nevertheless, the report itself contains analysis. (Appendix I at 8-12)

Although six complaints were not date-stamped, the case files in all but one indicate that the complaint was received within 5 days of the date indicated on the complaint/form.

In Region VI, in each of the 19 cases reviewed, the receipt date stamped on the complaint was the same as the receipt date entered into ACIMS. Sixteen of the complaints were dated by the complainant; with respect to 15 of these complaints, an average of 5 days elapsed between the date of the complaint and the receipt date entered into ACIMS. Receipt of the remaining complaint by the Region was delayed because the complainant mailed it to the Secretary's Office rather than directly to OCR.

In Region VII, in each of the five cases reviewed in this area, the receipt date stamped on the complaint was the same as the receipt date entered into ACIMS. Of the four complaints which were dated by the complainant, two were received within 8 days after the date of the complaint. The other two dated complaints were received more than a month after their dates, but one of these complaints was returned to the complainant twice by the post office and was received by OCR 5 days after the date of the last postmark. The period of time that elapsed between the date of the other complaint and the date it was received by OCR does not by itself raise a question as to the accuracy of the receipt date, as the complainant may have delayed mailing the complaint after having dated it.

Region VIII was not reviewed in this subject area.

In Region IX, 23 of the 29 cases reviewed in this area were date-stamped. In each case, the receipt date stamped on the complaint was the same as the receipt date entered into ACIMS. The remaining six complaints, five of which were filed by one complainant on the same date, were not date-stamped. One complaint that was not date-stamped was recorded in an intake log as having been received 15 days after the receipt date recorded in ACIMS, a discrepancy that had no effect on the Region's compliance with the Adams time frames for this case; the RD explained that the ACIMS entry was in error. Twenty-two of the complaints were dated by the complainants, and seventeen of these complaints were received within 1 week of the date of the complaint. The remaining five complaints were received between 15 and 33 days after the dates of the complaints. The delay in receipt of one of these complaints is attributable to the fact that the complaint was twice mailed to the wrong address. The periods of time which elapsed between the dates of the other complaints and the dates they were received by OCR do not, by themselves, raise a question as to the accuracy of the receipt dates recorded in ACIMS as the complainants may have delayed mailing the complaints after dating them.

In Region X, in four of the six cases reviewed, the receipt date stamped on the complaint was the same as the receipt date entered into ACIMS; in one case, the ACIMS receipt date was 1 day before the date-stamped receipt date, and in another case, the complaint was not date stamped by the Region. Each of the complaints was dated by the complainant. Three of the complaints were received by the Region between 4 and 8 days after the dates of the complaints, and one was received 22 days after the date of the complaint. Two of the complaints were received more than 30 days after their dates; however, the delay in receipt of one of these complaints is attributable to the fact that it was filed with another agency and was subsequently forwarded to OCR. The periods of time that elapsed between the dates of the complaints and the receipt dates recorded in ACIMS do not, by themselves, raise a question as to the accuracy of the receipt dates recorded in ACIMS, as the complainants may have delayed mailing the complaints after dating them.

CONCLUSION

With regard to recording the date on which complaints were received, some occasional minor departures from OCR procedures were observed in some Regions. Examples include failing to date stamp an incoming complaint or failing to include a copy of the complaint in files of all companion cases. Some questionable decisions also were observed, such as considering a complaint as "received" on the date the region concluded that OCR should investigate the matter instead of on the date the letter was recieved. However, these departures from OCR practice or errors, when they occured were anomalies among the cases examined. On the whole, Regions accurately recorded the receipt dates of complaints.

2. Was there evidence that regional staff were not accurately recording and entering into ACIMS the date on which complaints were rendered "complete?"*

In Region II, 7 of 30 complaints were incomplete when received. In only one case (No. 7) was there a discrepancy between the completion date indicated by the file and that entered into ACIMS; the discrepancy appeared to be an error on the case control form.

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*The Regional reviews, as planned, did not include an examination of complaints deemed incomplete to determine whether the Regions used appropriate standards in making those judgments. See definition of "complete complaint" in *Adams* order, above at 5. This should be regarded as a separate subject area. Since teams were not instructed to and did not systematically gather information on this subject area, it is not discussed in this analysis and no conclusions are drawn about Regional practices. To the extent that any teams made observations about practices in this subject area, those observations may be found in the individual Regional reports at Appendices I - X.

In Region III, 4 of the 28 cases were incomplete upon receipt. Two of these cases were rendered complete when the complainant provided further information. The complainants failed to complete the other two cases.

In Region IV, 13 of the 19 cases were regarded as incomplete when received. In 11 of the 13 cases, complainants provided the information, the complaints were completed, and that fact was accurately recorded. In each of two cases (Nos. 2 and 3), there was an acknowledgment letter and a later letter stating that the case was incomplete. Moreover, in Case No. 2, the complaint was recorded as complete more than 3 weeks after the requested information was received. The ARD explained that Case No. 2 was part of a series of complaints against Georgia school districts. These complaints were originally determined to be complete, but the former RD decided to solicit further information from the complainants and, following receipt of that information, have the Chief Civil Rights Attorney determine whether the complaints were complete. Apparently, the completion dates for that series of complaints "were the dates the [Civil Rights Attorney] determined them to be complete." (IV-RD-3) This is incorrect procedure. Assuming that the Georgia complaints were incomplete as filed, the completion date should have been the date the additional information was received, not the date the Chief Civil Rights attorney determined that the information rendered the complaint complete. The team report does not specifically identify how many of the 13 cases deemed to be incomplete were part of the "series" of complaints against the Georgia school districts to which the ARD refers.

In Region V, 8 of 23 cases were deemed incomplete when received. In all cases, a review of the file verifies the actual completion date as the same as recorded in ACIMS.

In Region VI, the complaints in 3 of the 19 cases reviewed in this area were incomplete upon receipt. Each of these complaints was completed within 30 days of receipt of the original complaint. In each instance, the file contained evidence that the Region obtained the information required to complete the complaint on the "completion date" entered into ACIMS.

In Region VII, the complaints in three of the five cases reviewed were incomplete upon receipt. Two of the complaints were completed within 45 days after receipt, and one was completed within 120 days. In each instance, the file contained evidence that the Region obtained the information required to complete the complaint on the "completion date" entered into ACIMS.

Region VIII was not reviewed in this subject area.

In Region IX, the complaints in 9 of the 29 cases reviewed in this area were incomplete upon receipt. Six of these cases were completed within 1 month after receipt; the remaining were completed between 2 and 7 months after receipt. In each instance, the file contained evidence that the Region obtained the information required to complete the complaint on the "completion date" entered into ACIMS.

In Region X, complaints in five of the six cases reviewed were determined to be incomplete upon receipt. In each instance, the file contained evidence that information requested by the Region to complete the complaint was obtained on the "completion date" entered into ACIMS. In four of the five cases, the complaint was completed within 16 days after its receipt.*

CONCLUSION

With regard to accuracy in recording the dates that complaints were rendered "complete," a possible error in a series of cases was observed in Region IV. Otherwise, regions accurately recorded the completion dates of complaints.

3. Was there evidence that acknowledgment letters were mailed after the Adams due date but backdated so that it would appear that the Adams acknowledgment time frame had been met?

In Region II, no available records suggest legal review of the acknowledgment letters. Moreover, only eight acknowledgment letters had sign-offs by any PRMS staff. Thus, while no discrepancies were found and all other evidence suggests that the acknowledgment letters were issued on the due dates as recorded in ACIMS, it is not possible to substantiate the actual issuance dates by dated sign-offs. The ARD did not explain why the sign-offs were undated.

In Region III, the RD's log shows the approval of the acknowledgment letter in Case No. 10 ocurred 1 day after the due date. The ARD explained that the letter was approved and mailed on the due date, but the log entry made the next day and incorrectly dated that day. The explanation is reasonable.

In Region IV, 18 of the 19 cases reviewed in Region IV had no dates by the sign-offs by program staff. Attorneys signed off on none. Except in four cases, the review team found that attorney records showed that attorneys had approved the acknowledgement letters on or before the date of issuance. The ARD provided some explanation about attorney review in the four cases. However, even assuming that attorneys reviewed some of the acknowledgment letters on or before the Adams due date, the lack of dated sign-offs on all but one of the acknowledgment letters makes it impossible to determine whether that program staff reviewed and issued the letters on the due date. While there are no discrepancies with the actual issuance dates entered in ACIMS, the lack of dates on sign-offs eliminates the possibility of substantiation of the actual issuance dates of the acknowledgment letters. The ARD did not explain why the signoffs were undated, but did state that he had issued instructions that this practice should not occur in the future.

In Region V, attorneys did not review each acknowledgment letter, although the RD explained that the form for routine letters had been developed with attorney involvement. All sign-offs were before the acknowledgment due date.

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*Review Team 3 observed that Region X employed a rigorous intake process in reviewing incoming complaints for, among other things, completeness. Four of the complaints determined to be incomplete were filed on OCR complaint forms. However, no conclusions about the appropriateness of these determinations are drawn, based on the scope of the overall review.

In Region VI, 19 case files were reviewed in this subject area. None of the information obtained during the review indicated that the acknowledgment letter in any of these cases had been mailed after its *Adams* due date and backdated. At least one file copy sign-off was undated in more than half of the acknowledgment letters reviewed. Where sign-offs were dated, however, all were dated on or before the dates of the acknowledgment letters.

In Region VII, five case files were reviewed in this subject area. None of the information obtained during the review indicated that the acknowledgment letter in any of these cases had been mailed after its *Adams* due date and backdated. The file copy of each acknowledgment letter had sign-offs, all of which were dated on or before the dates of the acknowledgment letters.

Region VIII was not reviewed in this subject area.

In Region IX, 29 cases were reviewed in this subject area. Discrepancies relating to the dating of acknowedgment letters were noted in three cases, but in one of these cases the discrepancy had no effect on the Region's compliance with the *Adams* acknowledgment due date for the case. The review team found that one of the sign-offs on each of the other two letters was dated subsequent to the *Adams* due date. The ARD stated that the sign-off in one of the letters was apparently misread by the team as it is the same as the date of the letter. In the other case, the ARD explained that an attorney who had reviewed the acknowledgment letter in draft signed off on the file copy several days after the letter had been mailed. The ARD's explanations regarding these cases appear reasonable.

In Region X, six case files were reviewed in this subject area. None of the information obtained during the review indicated that the acknowledgment letter in any of these cases had been mailed after its *Adams* due date and backdated. In each case, the acknowledgment date reported in ACIMS was supported by attorney records and file copy sign-offs.

CONCLUSION

With regard to backdating acknowledgment letters, in some regions (e.g., III) isolated discrepancies were found. These may be regarded as anomalies among the cases examined. In other regions (II, IV, and VI), the absence of log entries or sign-offs on acknowledgment letters made substantiation of the issuance dates difficult. However, based on the information available, the absence of discrepancies suggests that regions were not backdating acknowledgment letters.

4. Was there evidence that acknowledgment letters had been issued after the Adams due date but recorded in ACIMS as having been issued on the due date?

Although a few anomalies were found in Regions II, III, IV, V, VI, VII, IX, and X, there was no evidence that a date other than the actual issuance date of acknowledgement letters was entered into ACIMS. In Region VI, the review team noted that two of the letters issued did not contain all of the required components of an acknowledgment letter, however. In Region VII the review team noted that one of the letters issued did not contain all of the required components of an acknowledgment letter, however.

Region VIII was not reviewed in this subject area.

In 1 of 29 cases in Region II, the acknowledgment date recorded in ACIMS was 1 day after the date on the file copy of the letter. The ARD explained that the date on the letter was an error. This error had no effect on the Region's compliance with the Adams acknowledgment due date for the case. In Region X, in one of six cases, evidence in the case file, including the date of the letter in the file, indicated that the letter was issued before the Adams due date but the acknowledgment date reported in ACIMS was the same as the Adams due date. This discrepancy had no effect on the Region's compliance with the Adams acknowledgment due date for the case, however.

CONCLUSION

Although a few anomalies were found, there was no evidence regions entered a date other than the actual issuance date of the acknowledgment letter into ACIMS.

B. LOF Subject Area

1. Was there evidence that Letters of Findings (LOF) were issued after the Adams due date but backdated so that it would appear that the Adams LOF time frame had been met?

In Region II, the LOFs in 41 of 49 files had at least one sign-off. None of the sign-offs on the LOFs with sign-offs was dated after the LOF due date as recorded in ACIMS. Although the team reported that seven of these had no sign offs, that figure has been revised to eight (Nos. 36, 37, 42, 52, 53, 54, 58, and 76). While the team report stated that "no major problems" were found in this Region, LOFs with no staff sign-offs should be considered problematic. Moreover, there is no entry in the attorneys log showing clearance of the LOFs in six of those cases (Nos. 36, 37, 42, 53, 54, and 58). Therefore, there is no substantiation from those sources that the LOFs actually were issued on the due date nor can Regional compliance with OCR procedure be demonstrated. Additionally, the team reports that LOFs in five cases (Nos. 31, 40, 56, 60, and 62) had sign-offs by only one person acting in several capacities, including ARD. Such a practice is inconsistent with the purpose of sign-off. The sign-offs in Case No. 74 were all undated, but the attorneys log shows the LOF being cleared the day before the due date.

In Region III, 19 cases were reviewed in this subject area. One case file (No. 42) did not contain an LOF. In another case (No. 46) an entry in the typist's log shows that the LOF was returned from typing 1 day after the Adams LOF due date. As 15 months have passed, the ARD could only suggest that the log entry in Case No. 46 is in error. In such circumstances, error may be regarded as an acceptable explanation for the discrepancy.

In Region IV, at least one dating discrepancy was found in 14 of the 32 cases reviewed in the LOF subject area. In seven of these cases (Nos. 26, 29, 31, 33, 36, 39, and 47) in which sign-offs on the file copy were dated after the LOF due date, the ARD stated that he was unable to obtain a "satisfact[ory]" explanation from his staff. The ARD stated that three other cases (Nos. 20, 25, and 46) with post due-date sign-offs were explained as inadvertent, although the nature of the mistake is not explained. In two cases (Nos. 42 and 48) the attorneys records indicate that, following review, the LOF was returned to staff after the LOF due date (3 days and 1 day, respectively). The ARD stated that verbal concurrence was obtained from the attorneys before the LOF due date and the LOF mailed on that date. However, the attorneys were not able to get their formal concurrence memoranda typed until after the LOF due date had passed. The absence of any explanation for dating discrepancies in seven cases, coupled with the explanation of inadvertance in five cases (Nos. 20, 25, and 46, and as discussed below, Nos. 32 and 38) suggests that some LOFs may have been issued subsequent to their LOF due dates and backdated so that it would appear that the Adams LOF due dates had been met.

In Region V, in 1 case of 38 reviewed (No. 38), the RD's sign-off is 1 day after the LOF due date. The RD stated that he gave his verbal approval to the Cleveland OCR office to release the LOF on the due date, and it was released on that date. However, the RD stated that Cleveland staff incorrectly dated the RD's approval. In such circumstances, error may be regarded as an acceptable explanation for the discrepancy. In Case No. 36, two attorneys signed off 2 days after the LOF issuance date but, at the time, indicated that the LOF had been approved in substance on the LOF due date. This is an example of post-issuance sign-off of a previously cleared LOF, rather than backdating.

In his memorandum of August 14, 1986 (Appendix V), the RD explained the process developed to review and approve documents simultaneously in Region V's Cleveland and Chicago offices when necessary to meet the Adams time frames. That memorandum is cited in Team 3's report on Region V to explain this process which was questioned during a review of the case files themselves. Insofar as the August 14 memorandum describes how draft LOFs are cleared in two offices in different cities on the same day, the explanation may be regarded as reasonable and accepted on that basis.

The August 14, 1986, memorandum does not specifically address the convention used when documents are signed by staff in Cleveland "for" other staff in Chicago. Section II-6.41 of the IPM requires that case files indicate that the LOF was "signed by the Regional Director." In the August 14 memorandum, the RD stated that once he has approved an LOF for release in Cleveland, the Director of the ESED in Cleveland signs the LOF "for the RD." Even if prior approval for this departure from the IPM has not already been obtained from the Acting Assistant Secretary, given the unique circumstances posed by Region V having two offices, it is quite likely that such practice would be approved, at least in exigent circumstances. However, the LOFs issued from Cleveland all bore a facsimile of the RD's signature.* Therefore, it is assumed that the Director of ESED in Cleveland has been signing the RD's name to LOFs issued in Cleveland, on the authority of the RD. Even with authority, the practice of signing another person's signature, which appears to have occurred in OCR's Cleveland office deserves reconsideration. While considering as such, this practice has not been regarded as a "discrepancy," as that term is being used in this report, since (1) it did not create an inference that an LOF had been backdated, and (2) there is no guidance in the IPM on the convention governing signing in the place of other staff.

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*The Team 3 Report on Region V observes that there was a lack of uniformity in format (i.e., convention) when staff signed off for other staff. (IV-9-10) Although the report mentioned this lack of uniformity in the context of the Cleveland office, it did not specifically highlight the RD's purported signatures as an observation which, in part, prompted the comment. This may explain why the RD, in his responsive comments, did not specifically address that issue.

In Region VI, discrepancies relating to dating of the LOF were noted with respect to 18 of the 28 cases reviewed. The RD offered explanations for discrepancies relating to ten of the cases.

Many of the Region VI discrepancies noted were based on entries in the attorneys log which indicated that the attorneys had received an LOF from the Program Division or returned an LOF to the Program Division after the date of the LOF. Such an entry could indicate that the LOF was not issued on the date reported by the Region, but instead was still being reviewed by the attorneys after that date. The RD explained that in some instances, draft LOFs were verbally cleared by attorneys with the understanding that any revisions required by the attorney would be incorporated into the final LOF. The attorney then transmitted written comments regarding the LOF to the Program Division at a later date for inclusion in the case file, and the Division provided a copy of the LOF that had been issued to the attorneys; this practice resulted in attorney log entries dated after the dates of the LOFs. According to the RD, in some of these cases, the attorney did not sign the file copy of the LOF until after it had been issued, resulting in a file copy sign-off dated after the LOF. Attorney log entries for some of the cases in which such discrepancies were noted contained entries indicating that a draft of the LOF had been provided to the attorneys before the LOF due date. It is not unreasonable that actions were taken to expedite the review process when the Adams LOF due date was imminent, and the RD's explanation may be accepted on that basis.

The RD explained discrepancies in a Region VI case where the date of two sign-offs was changed from a date after the Adams due date to the Adams due date, and a case where the date on one of the LOFs was changed from 1 day after the Adams due date to the Adams due date as resulting from staff errors. File copy sign-offs by the Deputy Regional Director in two cases dated several days after the dates of the LOFs were explained as resulting from a Regional procedure then in effect whereby cases were reviewed by the Deputy after closure to ascertain if they had been processed in accordance with quality assurance standards. As the review team found the Deputy seldom signed the file copies of LOFs as part of the LOF clearance process, his sign-off on these LOFs several days after they were issued may reasonably denote a post-closure review process.

The RD offered no explanation for eight Region VI cases in which more than one dating discrepancy was found by the team. He stated that Adams due dates have been noted on LOFs submitted to him for signature and, since the due dates indicated by his staff have been the same as the dates upon which he received the LOFs, he has had no reason to question whether the dates are accurate or whether LOFs have actually been issued on the dates indicated in ACIMS. In the absence of any explanation by the RD relating to these cases, and in light of the fact that more than one dating disrepancy was noted in each case, it appears that the LOFs in these cases may have been issued subsequent to their LOF due dates and backdated so that it would appear that the Adams LOF due dates had been met.

In Region VII, discrepancies were noted in 17 of the 36 cases reviewed in this area; in three additional cases, the file contained no copy of the LOF. The ARD offered an explanation for the discrepancies in each case.

With respect to the absence of LOFs in Region VII case files, the ARD stated that the LOF for one of the cases was in a case file not reviewed by the team, and the Region had inadvertently omitted copies of the LOFs from the files of the other two cases. In only one of these three cases was any other discrepancy noted. In this case, a corrective action plan upon which the LOF had been based had been date-stamped 3 days after the date of the LOF, but the date was changed to the LOF due date. The ARD explained that the plan had been picked up by an EOS and read over the telephone to a staff member on a Friday. The LOF was then prepared and issued on its due date. When the EOS arrived in the office the next Monday, the plan was date-stamped as of that date. The Region subsequently decided it would be more appropriate to date-stamp the plan as of the date the EOS obtained it, and the date was changed accordingly. The case file contained a memorandum from the attorneys approving the LOF which was dated subsequent to the date of the LOF. However, a footnote to the memorandum stated that the attorneys had verbally approved the LOF before its issuance. The footnote to the memorandum and the ARD's explanation for the changed date on the corrective action plan adequately explain the discrepancies noted in this case.

The discrepancies noted in the other 16* Region VII cases all related to file copy sign-offs dated after dates of LOFs or indications by typists that LOFs had been typed or revised after the dates of the LOFs. The ARD stated that the discrepancies relating to all of the cases, with one exception, were the results of staff error. In the remaining case, where all sign-offs were dated 1 day subsequent to the date of the LOF, the ARD failed to provide an explanation for the sign-off discrepancy. However, the ARD did comment about a corrective action plan on which closure had been based that was dated after the date of the LOF, noting that the Region had discussed the plan with the recipient over the telephone and had decided to close the case on the LOF due date on the basis of the recipient's oral assurances.

Data upon which to base a conclusion with respect to whether Region VII accurately dated LOFs is somewhat limited. The Region maintained no attorney log, correspondence log, or other records that could serve as a source for determining when LOFs were approved or issued. As stated above, discrepancies relating to file copy sign-offs or typist notations dated 1 day after the dates of LOFs were found in 16 of the cases reviewed, and the only explanation offered by the ARD was that discrepancies resulted from staff error. While it is not unreasonable that some degree of staff error may occur, a pattern of dating discrepancies appears to have existed in Region VII.

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*Nine of these cases are related complainants filed on the same day by a single complainant. Sign-off discrepancies were noted by the team on the LOF to the complainant covering all nine cases, and on three of the LOFs to the recipients. The ARD agreed that the complainant's LOF contained a sign-off dated subsequent to the date of the LOF but stated that this occurred with respect to only one of the recipient's LOFs.

In Region VIII, dating discrepancies were noted in 2 of the 17 cases reviewed in this area. In one case, although all file copy sign-offs are consistent with the date of the LOF, the sequence in which receipt of a corrective action plan upon which the LOF was based was entered in a log suggested that the plan might have been received after the LOF issuance date; the file copy of this LOF indicates that it was typed 1 day after the issuance date. In the other case, sign-offs originally dated after the date of the LOF have been changed to the date of the LOF, and the date of a memorandum of a telephone call to the complainant to provide adverse findings has been changed similarly.

The RD adequately explained the discrepancy relating to the corrective action plan in the first Region VIII case, indicating that the plan had been picked up by a staff member before the *Adams* due date and later brought to the office and logged in. He stated that the typing date indicated on the file copy was apparently an error, an explanation which is not unreasonable. With respect to the other case, however, the RD stated that the LOF had in fact been mailed after its *Adams* LOF due date. He stated that the date of the attorney's sign-off had been changed without the attorney's knowledge and that the date of the RD's sign-off had been written on the file copy by someone other than the RD, apparently the former Division Director. According to the RD, the Division Director told a secretary to date the return receipt form incorrectly so that it would appear that the LOF had been mailed on its *Adams* due date. Based on the RD's statement, the LOF in this case was backdated so that it would appear that the *Adams* due date had been met.

In Region IX, discrepancies were noted in seven of the 20 cases reviewed in this area. In each of these cases, one or more file copy sign-offs was dated after the date of the letter, and in several of these cases, attorney records indicated clearance of the LOF after its issuance date. In his response, the ARD agreed that these discrepancies had occurred. The ARD stated that the ESE Division had adopted a practice of dating an LOF as of the date the LOF was typed and ready for issuance. Although the ARD did not specifically explain how this practice affected each of the seven cases, it appears that in each case the LOF was dated on its *Adams* due date but was not mailed until one or more days after the *Adams* due date. Thus, in each instance the LOF issuance date entered into ACIMS is inaccurate, and the *Adams* LOF due date was not met.

In Region X, discrepancies relating to this area of inquiry were noted in 7 of the 20 cases reviewed in this area. In each of the seven cases, an entry in the attorneys log indicated clearance of the LOF after the date of the LOF; in four of the cases at least one sign-off was dated after the date of the LOF. The RD stated that, due in part to inadequate clerical support, activities are not always entered into the attorneys log as soon as they occur and errors are sometimes made. He added that the log entry noted as a discrepancy with respect to one case referred to a letter to a government agency forwarding a copy of the LOF, rather than to the LOF itself. With respect to the sign-offs dated after the dates of LOFs, the RD stated that while it was not possible to reconstruct exactly what had happened, on some occasions, reviewers did not sign file copies until a day or so after a document had been approved.

The RD's explanation regarding the Region X case in which a log entry referred to a letter issued after the LOF rather than to the LOF is reasonable. Excluding this case from consideration, entries regarding 6 of the 20 cases reviewed (30%) are inaccurate, based on the RD's explanation. While it is not unreasonable that recordkeeping errors may be made, there does appear to be a pattern of log entries reflecting LOF clearances 1 day after the LOF due date. With respect to the explanation regarding the dates of file copy sign-offs, it is reasonable that some of the persons who cleared drafts of LOFs may be absent when the LOFs are issued. In each of the four cases in question, however, the Chief Attorney signed the file copy 1 day after the date of the LOF, and in three of these cases, the RD signed the file copy 1 day after the date of the LOF. Although it is possible that the Chief Attorney may have been out of the office when each of these LOFs was issued and signed them upon returning the next day, it is not clear why the RD did not immediately sign the file copy when he signed the LOFs. Since other staff members signed the file copies on the LOF issuance dates, it appears that the file copies had been prepared as of those dates and could have been signed by the RD.

CONCLUSION

With regard to backdating LOFs, only occasional dating discrepancies were found in Regions III and V which, in light of all the information, may be regarded as anomalies. In Region II, while no discrepancies were found, the absence of sign-offs on a number of LOFs made substantiation of all LOF issuance dates difficult. However, based on the information available, the absence of discrepancies suggests the likelihood that backdating of LOFs did not occur in these Regions.

In Regions IV, VI, VII, IX, and X, dating discrepancies were found in a larger group of cases. In Region IV discrepancies were found in 14 cases out of 32 cases examined in that subject area; in Region VI, discrepancies were found in 18 of 26 cases; in Region VII, in 17 of 36 cases; in Region IX, in 7 of 20 cases; and in Region X, in 7 of 20 cases. While some of the RDs explained some discrepancies satisfactorily, no explanation was offered for other discrepancies (e.g., ARD-IV offered no explanation for discrepancies found in 7 cases; RD-VI offered no explanation for discrepancies found in 8). Some explanations were incomplete (e.g., RD-X did not completely explain discrepancies found in 6 cases), and some explanations may be regarded as questionable (e.g., ARD-VII offered that discrepancies in 15 cases examined were due to staff error). Some explanations suggested that backdating had occurred (e.g., ARD-IX suggested that unsound staff dating procedures may have led to inaccuracy in this subject area in seven cases). Overall, the available information suggests the likelihood that some LOFs were backdated in these Regions.

2. Was there evidence that LOFs had been issued after the Adams due date but recorded in ACIMS as having been issued on the due date?

In Region II, the signature copies of four LOFs (Case Nos. 34, 46, 55, and 63) were undated, and it was not possible for the review team to check the issuance dates against those in ACIMS. The ARD's response to this observation was not directly responsive. The LOFs for three of these cases were retrieved from the

LOF Library in Headquarters. They were dated the same date as that entered into ACIMS. The LOF for Case No. 34 was not located, although the dates on all sign-offs suggest that the LOF was issued on the due date as represented.

In Region III, one case (No. 46) was found in which the date on the LOF was September 1, 1985, and the LOF issuance date in ACIMS was July 1, 1985. All other file information suggests that the LOF was issued on July 1, 1985, the LOF due date. The review team concluded that the date stamped on the LOF was an error, an acceptable explanation under the circumstances.

In Region IV, in Case Nos. 32 and 38, the LOFs in the file are dated 1 day after the issuance date as recorded in ACIMS (i.e., the LOF due date). The ARD stated that the LOFs were signed on the LOF due date but mailed the next day and that the secretary inadvertently dated them the date they were mailed rather than the date they were signed. Insofar as the ARD proposes that the LOFs were "issued" on the LOF due date since they were signed on that date as opposed to being mailed on that date, his interpretation of "LOF actual issuance date" appears to be different from that generally followed, and indicates the advisability of guidance on this point. Whereas the ARD could propose that the secretary should have dated the LOFs the date they were signed, since the LOFs were actually mailed the next day, the "actual" LOF issuance date might be regarded as the next day.*

Also with reference to Region IV, in six cases (Nos. 25, 33, 34, 36, 37, and 39), Regional staff calculated an incorrect Adams LOF due date and recorded it on the case control form (CCF). With reference to 5 of these (Nos. 25, 33, 34, 36, and 37), the ARD was unable to obtain any explanation. In Case No. 33, the CCF indicates that the LOF was issued and the case closed 1 day after the due date. There is also a sign-off dating discrepancy in that case, as there are in Case Nos. 25 and 36.

In Region V, no discrepancies were found between the LOF dates as recorded in ACIMS and the dates on the LOFs in the file.

In Region VI, the date of each LOF was the same as the LOF issuance date recorded in ACIMS. The review revealed no evidence that the Region had dated and mailed the LOFs after their Adams due dates but recorded in ACIMS that the LOFs were issued on their due dates.

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*None of the applicable documents explicitly defines what is meant by "issuance" of an acknowledgment letter or LOF. For example, the 1977 Adams order requires OCR to "notify" the complainant whether the complaint is complete [paragraph 8(a)], "notify" the complainant then findings have been made (paragraph 11), and "issue" the notifications required elsewhere [paragraph 15]. Similarly, the IPM speaks of the LOF being "issued" (e.g., II-7.1) but does not state whether that means signing, dating, mailing, or all three. The ACIMS computer category "LOF Actual" is defined as "the actual date the LOF was issued," without defining "issued." One interpretation of "issuance" is that the acknowledgment letter or LOF is issued (i.e., provides notice of its contents) when it is mailed. Of course, this problem of interpretation only arises where, as here, the document is not mailed on the same day it is signed.

In Region VII, the date of each LOF was the same as the LOF issuance date recorded in ACIMS. The review revealed no evidence that the Region had dated and mailed the LOFs after their Adams due dates but recorded in ACIMS that the LOFs were issued on their due dates.

In Region VIII, a single discrepancy was noted with respect to 10 related cases filed by a single complainant. In each case, the Region found that a violation had occurred and engaged in pre-LOF negotiations with the recipient before the Adams due date. During this process, a letter was issued to each recipient which outlined the region's findings. On the Adams due date for each case, the Region issued a brief letter advising the recipient that the case was being closed and indicating that an LOF would follow. The LOF was then issued 8 to 15 days after the LOF due date. However, the Region recorded in ACIMS that the LOF in each case had been issued on the Adams due date.

The RD defended the actions of Region VIII with respect to these cases, noting that the Region was short of staff and the cases imposed a major burden on the Region. He contended that letters issued to the recipients during the pre-LOF negotiations process which outlined OCR's preliminary findings met the requirements of the Adams order that a determination of compliance or noncompliance be made in writing within 105 days of receipt of a complete complaint. He noted that each recipient made an oral or written commitment to remedy the areas of noncompliance before the LOF due date but there was insufficient time to permit issuance of formal LOFs within the 105-day time frames permitted by the Adams order.

The procedure followed by the Region with respect to these cases does not meet the requirement of the Adams order, as consistently interpreted by OCR, that LOFs setting forth conclusions for all issues and allegations which are supported by explanations or analyses of relevant information must be issued to the complainant and recipient within 105 days after receipt of a complete complaint. Although the letters which were issued by the Region during the pre-LOF negotiations process did briefly outline some of OCR's findings, the letters did not contain most of the components of an LOF. Even if these letters could be construed as meeting the requirements of the Adams order with respect to notification of findings to recipients, no letters were issued to the complainants until the formal LOFs were issued, after the Adams due dates had passed. Although the data entered into ACIMS indicate that the LOFs were issued on their due dates, in fact, the LOFs were issued after the Adams due dates for these 10 cases had passed.

While the handling of these cases by the Region was not consistent with the requirements of the Adams order, the Region appears to have acted openly in an effort to resolve these cases promptly despite an unusually heavy workload and temporary staff shortages. Further, there is no indication that the Region routinely applied the interpretation described by the RD in the handling of its cases. Thus, the discrepancy noted with respect to these cases does not appear to represent a general Regional practice.

In Region IX, in one case, although the recipient's LOF was dated on the Adams due date and the Region recorded the LOF issuance in ACIMS as of that date, the complainant's LOF was not issued until several days later. In another case, the complainant's LOF was issued on the Adams due date, and that date was recorded in ACIMS as the LOF issuance date; however, the LOF to the recipient was not issued until several days later. In his response, the ARD stated that the ESE Division had a practice of sometimes issuing LOFs to complainants and recipients on different days. In each of these two cases, the Region apparently issued one of the LOFs on the Adams due date and entered this date into ACIMS. However, the other LOF was not issued until several days later. The Adams order requires OCR to make a written determination as to whether a violation has occurred within 105 days of receipt of a complete complaint and provides that OCR must notify the complainant and recipient through an LOF. OCR has consistently interpreted these requirements as requiring issuance of LOFs to both the complainant and recipient within the 105-day time frames. Thus, the Adams due dates for both of these cases were missed.

In Region X, discrepancies in three cases* were noted in this area. In one case, a file copy of an LOF was stamped with a date which was 1 day after the LOF issuance date recorded in ACIMS. The RD stated that this was an error. In one case, the LOF to the recipient was dated 1 day after the LOF issuance date entered into ACIMS, and in another case, the LOF to the complainant was dated 1 day after the LOF issuance date entered into ACIMS. The RD stated with respect to these two cases that although the Region normally issues LOFs to complainants and recipients on the same day, there may have been some instances where this practice was not followed. The RD stated that if the LOF to either the complainant or the recipient was ready to issue on the Adams due date, it would be issued even if the other letter could not be issued until a later date. He stated that he did not believe that this practice was precluded by the Adams order or the IPM. While neither the Adams Order nor the IPM precludes the issuance of the LOFs on different days, the failure to issue both LOFs by the Adams due date would result in a failure to meet the Adams due date. Thus, the Adams LOF due dates for these two cases were apparently missed by the Region, contrary to the data entered into ACIMS.

CONCLUSION

Although not backdating, in Region VIII, the Adams LOF due date was incorrectly regarded as met in a series of 10 cases by the issuance of a brief letter advising the recipient that the case was being closed and that a full LOF would follow.

Otherwise, although a few anomalies were found in some regions, and with the exception of Region IV, the information reviewed did not suggest the likelihood that Regions entered dates other than the actual issuance dates of the LOFs into ACIMS.

C. Tolling Subject Area

1. Is there evidence that the bases and criteria for initiating tolls set forth in the Adams order had been incorrectly applied and, therefore, tolls improperly initiated?

In reviewing cases in Regions II and V, neither of the teams found a basis for concluding that criteria for initiating tolls as set forth in the Adams order had been incorrectly applied in the cases reviewed.

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*Two of these three cases are also discussed in the previous section of the Analysis relating to backdating.

Region II has tolled only 45 cases in each of the last 2 performance years, well below the nationwide average. Region V has remained fairly stable over the same period and had the same number of cases on toll on February 27 of each of the last 2 years.

Region III, on February 27, 1986, had 94 cases in toll status. On that date in 1985, Region III had 5 cases in toll status and in 1984, 4 cases. Therefore, in 1 year, there was an increase of 89 cases in toll status on February 27. Similarly, in the Performance Year (PY) July 1, 1985, through June 30, 1986, Region III tolled a total of 173 cases an average of 93 days each. In the 84-85 PY, it tolled 46 cases an average of 58 days each. Thus, the incidence and length of tolls increased greatly in Region III in the course of 1 year.*

In Region III, 31 of the 34 cases reviewed in the tolling subject area were tolled on account of "denial of access." The review team noted that 20 of the cases had documentation of a problem, which appears to be usually a delay in obtaining information from a recipient (e.g., Case Nos. 65 and 77). A review of the individual case reports shows that in only 1 case (No. 56) of the 31 cases did the team report finding evidence of a refusal to provide information -- i.e., that a recipient, "without good cause refuse[d] to supply information." Paragraph 19, *Adams* order, above at 6. None of the 31 cases was ever referred to headquarters for initiation of enforcement proceedings. Apparently, the practice in Region III had been to toll a case on account of denial of access if a recipient was unable to provide information within time frames stated by OCR, needed an extension (e.g., Case Nos. 65 and 74), or was otherwise delayed in gathering information requested by OCR. The ARD stated that many of the tolls were initiated in student health insurance cases and justified the initiation by the size of OCR's data requests and the recipient's difficulty in meeting these requests. In these cases, the ARD states that the delays in OCR obtaining information was attributable to the nature and amount of information OCR sought from recipients in order to establish jurisdiction. See *Grove City v. Bell*, 104 S. Ct. 1211 (1984). It is evident that the regional practice is based on the honest belief that such tolls are permissible under the *Adams* order.

Region IV tolled 59 cases an average of 48 days each during PY 1984-85. During PY 1985-86, ACIMS reports that the Region tolled 163 cases an average of 61 days each, an increase in both the number of cases and days tolled per case. Sixty-five of these were part of a series of cases against Alabama public school districts and were tolled between December 6, 1985, and January 7, 1986. The 163 cases tolled represent an increase of 104 cases more than were tolled in the previous performance year.

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*In some Regions, the increase in the number of cases on toll may reflect an increase in caseload generally, in part attributable to a group of cases filed in the last year alleging that colleges and universities discriminate on account of sex in the provision of student health insurance. See footnote **, above at 17.

ACIMS reports that all 11 Region IV cases in toll status on February 27, 1986. had been tolled a total of 17 times. ACIMS also reports that on February 27, 1986, eight of these cases (Nos. 52, 53, 55, 56, 57, 58, 59, and 60) were in toll status on account of denial of access (whereas the team reported nine). OCR has initiated formal enforcement proceedings in five of the cases tolled on account of denial of access (Case Nos. 52, 53, 55, 56, and 57). All five of those cases remained tolled as of August 4, 1986. ACIMS reports that the remaining 3 of the 11 cases on toll were tolled on account of pending litigation. The team reports that all three tolls (Case No. 54, 61, and 62) had been approved by the Acting Assistant Secretary.

In August, 1986, the Region IV ARD independently reviewed 110 cases that had been tolled during FY 1985-86. The ARD stated that as guidelines, his review applied the "1983 Adams Court Order" and instructions contained in the OCR memoranda of September 15, 1983, and March 7, 1984." (Appendix IV) Overall, the ARD's review concluded that 80 percent of the 76 cases tolled on account of witness unavailability were "tolled incorrectly."*

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*The Region IV ARD's Task Force regarded a large number witness unavailability tolls as "incorrect," because they were initiated before the development an approval of an Investigative Plan (IP). Approval of an IP before initiating a toll is not a requirement of the Adams order nor OCR policy memoranda on the subject. It may be that the ARD regarded approval of the IP as a logical precondition to a "correct" toll since "a list of witnesses the investigator intends to interview should be included in the IP" (See, IPM § II-1.27), but an approved IP is not a per se antecedent to the initiation of a "correct" toll.

Similarly, the ARD's Task force regarded many tolls as "incorrect" where the toll was initiated on the date of the acknowledgment letter. The March 7, 1984, memorandum on tolling (Appendix XII) states that that "the toll start date is the date OCR discovers the need for a toll." The footnote to that statement specifically identifies an instance where the toll start date would be in advance of the acknowledgment date. (Footnote 6 at page 2) While an unusual occurrence in the case of a toll on account of witness unavailability, there may be situations where a toll in advance of acknowledgment could be justified. In any event, it is incorrect to assume that any toll initiated in advance of the acknowledgment date is incorrect per se.

Similarly, other criteria apparently used by the Region IV ARD's Task Force in judging whether a toll was "correct" do not appear in the Adams order or OCR policy (e.g., "tolling end date not specified in [file] memo" or "tolling memo failed to specify number of days of tolling") or do not lend themselves necessarily to a judgment about the correctness of the initiation or continuation of a toll (e.g., "tolling end date in [file] memo different from date entered into ACIMS").

Similarly, the ARD found that 90 percent of the 31 cases tolled on account of denial of access were tolled incorrectly -- i.e., only 3 cases were tolled correctly.* Of these, almost all were regarded as incorrect because the recipient had requested more time to provide information requested by OCR, as opposed to having refused to provide information.*

Part of the sample were 32 Alabama school district cases. The ARD concluded that all but 1 were tolled incorrectly. Many of the witness unavailability tolls in the Alabama school district cases were judged to be incorrect: they were initiated because of delays, as opposed to refusals, by recipients in submitting information.

Overall, the ARD's report concluded that 88 cases of the 110 (80 percent) reviewed had been tolled "incorrectly."

In Region VI, there was evidence that the bases and criteria for initiating tolls set forth in the Adams order were sometimes incorrectly applied. Each of the 14 cases reviewed in this area in Region VI was recorded in ACIMS as having been tolled due to witness unavailability. However, some of these cases were tolled for reasons not permitted by the Adams order, e.g., because the complainant was thinking of adding more allegations or because the recipient had requested that OCR postpone its on-site visit. In other cases, although tolling for witness unavailability was appropriate due to the absence of a specific witness, tolling began before the date the witness actually became unavailable. Although the RD provided an adequate explanation for the initiation of tolling questioned by the team in one case, he generally did not dispute the team's comments regarding the inappropriateness of tolling. The RD stated that Regional staff did not understand when tolling could be initiated, noting that one case had been tolled as of the date that the Region learned that the witness would be unavailable rather than as of the date the witness actually became unavailable. As a result of the Regional staff's misunderstanding of the tolling provisions of the *Adams* order, the Region inappropriately initiated tolls in some cases.

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*The Region IV ARD's report does not identify the cases examined by his Task Force. It is not possible to know, therefore, which, if any, of the cases reviewed by the ARD's Task Force were the subject of later review by Team 1. Similarly, since the ARD's Task Force report does not identify the cases examined, it is not possible to know on which basis a particular case was found to be incorrectly tolled. Among the 110 cases examined, the ARD's Task Force found only 3 of 31 cases which were tolled "correctly" on account of denial of access (and 3 cases for which no determination could be made). The Team 1 report in the tolling subject area in Region IV states that each of the nine cases on toll on account of denial of access contained "letters from the recipient" denying access to OCR based on legal grounds. As mentioned, five of those cases are now in formal enforcement. We are unable to determine whether the findings of the two reviews are consistent -- i.e., we not know whether any of the nine cases in which Team 1 found the tolls to be "documented" corresponded to any of the 28 in which the ARD's Task Force found denial of access tolls to be incorrect.

The ARD's Task Force examined 110 cases of the 163 on toll during the performance year. Of the 110 examined, 32 were Alabama school district cases. Team 1 apparently examined none of the Alabama cases, as none was on toll on February 27, 1986.

In Region VII, of the eight cases reviewed, five were tolled for pending litigation with the approval of the Acting Assistant Secretary, one for denial of access, and two for witness unavailability. Although the cases were generally tolled in accordance with the terms of the *Adams* order, one case was noted in which it appears that tolling may have been initiated incorrectly. Although this case was tolled on the basis of witness unavailability, investigative activities continued during the period of the toll. The *Adams* order provides that a case may be tolled for witness unavailability when OCR is unable to complete an investigation or negotiation within the time frames for this reason. The former Assistant Secretary interpreted this requirement in a footnote to his memorandum of March 7, 1984, to the Regional Directors, stating " . . . a case can be tolled for witness unavailability if the remaining component of an investigation is obtaining testimony of such a witness. A case cannot be tolled because a witness is unavailable for questioning on one aspect of the investigation or negotiation, if the investigation or negotiation can proceed in other areas." The ARD stated with respect to this case, that to meet the *Adams* due date, the Region completed all of the investigative activities possible during the period of the toll. This response indicates that Region VII has misinterpreted the requirements of the *Adams* order with respect to the initiation of tolling for witness unavailability.

Region VIII was not reviewed in this subject area.

In Region IX, on February 27 of 1984, 1985, and 1986, there were 34, 18, and 101 cases on toll, respectively -- an increase of 83 cases on toll between 1985 and 1986. By way of comparison, Region V, another Region with a comparably large case load, had nine tolled cases on that date in each of 1985 and 1986. In PY 1985-86, Region IX tolled 222 cases, 110 cases more than the year before, representing the highest number of cases tolled by any Region in the performance year.

Of 53 cases reviewed in this area in Region IX, 52 were tolled due to witness unavailability. Many files contained no documents explaining the reasons tolling was initiated. In a number of cases where the reasons for tolling could be ascertained, however, it appears that tolling was improperly initiated. One case was tolled for 8 months due to the unavailability of three unnamed witnesses. These witnesses were not listed in the investigative plan, the file contained no documentation of attempts to contact them, and the investigation was completed and the case closed despite their unavailability. Another case was tolled due to the unavailability of the complainant when the complainant failed to return a telephone call from OCR regarding adverse findings. A number of cases (e.g., Nos. 16, 20, 28, 29, and 32) were tolled because the recipient delayed in responding to OCR's data request or in meeting with OCR for pre-LOF negotiations (Case No. 32). In one case (No. 29) a toll was initiated because the recipient's attorney was unable to review promptly the recipient's response to the data request so it could be mailed to OCR.

The Region IX ARD commented with respect to only some of these cases. He agreed that some of the files did not contain any information regarding the reasons for tolling and indicated that steps were being taken to ensure that all files contain appropriate documentation. He also provided additional information about the case tolled due to the absence of three unidentified witnesses and stated that in future cases, the identity of all witnesses would be set forth in the investigative plan. The RD did not comment with respect to the appropriateness of the tolling of the majority of cases discussed above.

According to information contained in case files of 27 of the cases reviewed, Region IX continued to process these cases although they were tolled due to witness unavailability. The Adams order provides that a case may be tolled for witness unavailability when OCR is unable to complete an investigation or negotiation within the time frames. (Memorandum of March 7, 1984, at Appendix XII) Since other investigative activities took place during the period that these cases were tolled, a question is raised as to whether the tolls should have been initiated or continued.

The ARD commented that activities which occurred with respect to several of the cases were minimal, although there were instances where cases were processed during the tolling period. He stated that he believes a liberal interpretation of what constitutes "case processing" should be applied* and does not believe it is unreasonable that some administrative case processing work, such as preliminary work on the investigative report or typing of summaries of interviews previously conducted, should be completed while the case is tolled. While the ARD's position may be reasonable, the review disclosed that during the time some of the cases were tolled in Region IX, a substantial amount of processing, including interviewing of witnesses, preparation of the investigative report, and in one case, issuance of the LOF, was completed.

In Region X, 16 cases were reviewed in this subject area. Although each case had been tolled under ACIMS code "1" (witness unavailability), one case had been tolled due to pending litigation, with the prior approval of the Assistant Secretary. Thus, although the tolling of this case was appropriate, the wrong tolling code was entered into ACIMS. The RD explained that his staff had mistakenly believed that the only available code for tolling was code "1," and this resulted in some reporting errors. In 12 of the cases, tolls were initiated when the Region experienced some delay in obtaining information from recipients or in arranging interviews. Several tolls were initiated during pre-LOF negotiations because the recipient needed time to evaluate proposed compliance plans. Regional staff apparently acted on the basis of their understanding that it was permissible, under the Adams order, to toll a case on account of witness unavailability if a delay was encountered in obtaining documents from a recipient (or recipient's representative). That understanding is incorrect.

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*In Region IX, the Civil Rights Attorneys were not involved in tolling decisions.

In his response, the Region X RD cited the misunderstanding by his staff with respect to the availability of tolling codes other than that pertaining to witness unavailability. He stated that such failures by recipients are more properly associated with the "denial of access" tolling category. The RD's comment indicates a misinterpretation of the Adams order. The order permits tolling for denial of access only when "an institution refuses to allow an investigation to be conducted, or without good cause refuses to supply records or other materials which are necessary, material and relevant and without which the investigation cannot go forward . . ." Delay by the recipient in providing information or in arranging interviews does not constitute a denial of access as defined by the Adams order. As a result of the Region's misinterpretation of this provision, Region X cases were sometimes improperly tolled.

CONCLUSION

The reviews disclosed that Regions III, IV (as found by the ARD's Task Force), VI, IX, and X routinely initiated tolls without an adequate basis in the tolling provisions of the Adams order or OCR written guidance interpreting those provisions. Cases were sytematically tolled when a recipient operating in good faith simply could not meet OCR's time frames for providing information (e.g., 10 days) or was otherwise delayed in providing information. In such circumstances, some Regions (IX and X) incorrectly invoked the "witness unavailability" tolling provision. In the same circumstances, other Regions (III and IV) incorrectly invoked the "denial of access" tolling provision. File documents and the comments of some of the RDs (e.g., ARD III and RD X) suggest the likelihood that much of the incorrect tolling was the direct result of misinterpretations of the tolling provisions of the Adams order. An absence of monitoring the initiation of tolls on the part of some senior managers also was apparent. The result is that a large number of tolls examined in those Regions may be considered as having been incorrectly initiated.

2. Was there evidence that tolls had been continued or extended after the original basis for the toll had been eliminated?

In Region III, the team found seven cases (No. 50, 52, 58, 64, 65, 76, and 80) in which the denial of access tolls continued but it was not apparent whether the original basis existed, i.e., since OCR had contact with the recipient during the pendency of the toll, it was not clear whether the recipient was denying OCR access to information. As for the student health insurance cases (Nos. 58, 64, 65, 76, and 80), the ARD explained that recipients asked for clarification of the data requests and in some cases, sought guidance on how its health insurance policy could be made to comply with Title IX. When data have been denied, discussions and negotiations about the nature and scope of data requests should be considered permissible. The RD's explanation may be regarded as satisfactory.

In Region IV, a toll was initiated in Case No. 60 on account of denial of access. The recipient provided the information on March 26, 1986, but the toll continued to May 12, 1986, without any apparent reason. The ARD stated that the file does not reveal why this toll was extended, nor has the Division Director offered any explanation. The continuation of this toll was incorrect.

In ESE Division Nos. 1 and 2, the Region IV ARD's Task Force found 13 instances of tolling beyond the date witnesses became available. Moreover, the ARD's Task Force stated that it was "likely" that many of the Alabama Special Project Cases, were tolled too long beyond the conclusion of winter vacation. (IV-ARD's Task Force at 6)

In Region V, four cases tolled on account of denial of access remain on toll (Nos. 25, 27, 28, and 30). Only one case (No. 28) has been submitted for enforcement, and the toll continues to be recorded in ACIMS.

The 1983 Adams order, at paragraph 19, provides that a case may be tolled if a recipient refuses to provide access to information which is necessary "and without which the investigation cannot go forward within 60 days of ED's request to do so, ED shall attempt to secure voluntary compliance within 120 days . . . ." If not successful, enforcement must be initiated within 150 days. This tolling provision is not part of the 1977 Adams order.

While a case is tolled, the Adams time frames set forth in paragraph 15 (or paragraph 19) of the 1977 order stop running. However, the special "denial of access" time frames found in paragraph 19(d) of the 1983 order appear to be triggered by a denial and begin running. It were these special denial of access time frames which the Region apparently missed in all four cases. ACIMS, however, apparently does not maintain an account of these time frames applicable only in denial of access cases.

The Region V RD stated that, with the concurrence of the Chief Civil Rights attorney, he interpreted the Adams order and the IPM as requiring OCR to exhaust all alternative sources of information and conclude that the information sought from the recipient is not available from any other source before initiating enforcement. This interpretation of the Adams order would, in part, explain why, in Region V, some tolls initiated on account of denial of access have retroactive start dates. Such would necessarily occur since, under the Region's interpretation, it would have to exhaust all alternative sources of information before being able to invoke the tolling provision (e.g., 80 days in Case No. 28). It appears, however, that the interpretation is being advanced to explain why cases in which such tolls have been initiated have not been forwarded to Headquarters for the initiation of enforcement. In that regard, the RD's comments suggest that he may believe that there are two standards contained within paragraph 19(d) of the Adams order: one standard for tolling a case on account of denial of access and a greater standard with an additional criterion (e.g., the information denied is not reasonably available from other sources) that must be met before a tolled case may be referred for enforcement on account of denial of access.

Under paragraph 19(d) of the 1983 Adams order there are at least two requirements that must be met in order to initiate a toll on account of denial of access: (1) the data request must be refused by the recipient, and (2) the refusal must operate to make it impossible for OCR to go forward with the investigation. It is not entirely clear what is intended by including the requirement that the nature of the refusal be such that OCR not be able to proceed with its investigation "within 60 days of its data request." (emphasis added) It may be that the Court intended that following a refusal, OCR use the 60 day period to find other ways to continue the investigation and only if such was found to be impossible was OCR permitted to toll the case. It's not clear whether the 60-day provision contemplates the possibility of retroactive start dates for such tolls -- back to the date of the recipient's refusal. Such retroactive tolling occurred in Region V and elsewhere.

In any event, once a toll has been initiated, it appears that the only additional requirement that must be met to initiate enforcement is standard -- the failure to secure voluntary compliance through negotiations. The Region V RD's explanation is thoughtful. Nevertheless, with the exception of the additional standard criterion, it appears that the criteria for initiating enforcement on account of denial of access are the same as those for initiating the toll itself.

In Region VI, the review disclosed evidence that some of the tolls of cases were continued or extended after the original basis for the toll had been eliminated. The review team noted that the files of 10 of the 14 cases reviewed identified the dates that witnesses were expected to become available, but the tolling did not end until later, sometimes a period of several months. A number of these files contained indications that these cases remained on tolling status because of legal questions about jurisdiction that arose in light of Pickens which operated to delay completion of the investigation.

The RD did not dispute the comments of the review team. With respect to many of the cases cited by the team, he stated that tolling had remained in effect well beyond the period of witness unavailability because of misconceptions by staff as to when tolling should end. According to the RD, staff believed that once a case had been tolled due to the unavailability of a witness, it should remain tolled until the on-site began. As a result of this practice, cases on toll at the time the Region received notice of the necessity to determine jurisdiction in light of the Pickens decision remained on tolled status until the determination had been made. This practice by Region VI resulted in tolls continuing well beyond the period of time that they were justified.

In Region VII, the review disclosed that tolling of one case for pending litigation continued after the Region learned that the litigation which served as the basis for the tolling had ended. The ARD agreed that the extension of tolling in this case had been inappropriate. The ARD also noted that the tolling of another case for witness unavailability ended 1 day after the witness had been interviewed rather than on the day the witness became available.

Region VIII was not reviewed in this area.

In Region IX, the review disclosed that in numerous cases, tolling had continued after the original basis for the toll had been eliminated. For example, one case was tolled on two occasions because a school official planned to take a 1 month vacation; on each occasion, the case remained tolled for 8 months. Another case which was tolled because the Superintendent would be unavailable for a month remained tolled for 1 year. Numerous cases tolled due to winter holiday or summer recess remained on tolled status well beyond the normal period of such recesses. Some cases tolled for summer recess, for example, remained tolled for a period of more than 10 months.

The ARD did not dispute the findings of the review with respect to these cases. He stated that, based on his review of these cases, he had determined that in most cases, the original toll had been correctly imposed but office procedures did not provide for adequate monitoring of such cases to ensure that the tolling was ended when appropriate. Thus, based on the findings of the review and the ARD's response, Region IX continued tolling in a substantial number of cases well beyond the period during which tolling was permitted under the terms of the Adams order.

In Region X, the evidence obtained during the review did not indicate that tolls were continued after the original basis for the toll had been eliminated. As is discussed above, a number of cases were found in which tolls were initiated for reasons that did not warrant tolling under the terms of the Adams order. Although the Region apparently misunderstood the reasons for which a toll could be initiated, it monitored the cases and ended the tolling as soon as the condition leading to the toll had ended. Thus, where a case was tolled because the recipient delayed in providing information, the toll was ended as soon as the information was obtained.

CONCLUSION

The reviews disclosed instances where tolls continued well beyond the time that they should have regardless of whether the toll was originally appropriately initiated under the Adams order. This problem was acute in Regions IV, VI, and IX.

GENERAL CONCLUSIONS

Some of the objectionable practices described above are the result of uninformed careless, or thoughtless regional management. Some RDs stated that they were not aware of LOF dating practices in their program divisions or claimed that staff error accounted for a large number of discrepancies. Some stated that they were unaware of the fact that their staff had an incorrect understanding of the tolling provisions. Some RDs did not approve the initiation and continuation of tolls.

However, the foregoing is not uniformly the case, even within a Region. The files provided an indication that conditions existed which could lead to incorrect or strained interpretations of the tolling provisions as well as other objectionable case management practices. These conditions were created by different forces, among them the absence of a uniform system for supervising and monitoring the implementation of the tolling provisions of the Adams order and the Supreme Court's decision in Grove City v. Bell. The Grove City decision created new and additional investigative tasks which OCR was, thereafter, required to accomplish within the time frames that had been established under different conditions. It should be noted that the tolling provisions of the March 11, 1983 Adams order makes no provision for OCR to avoid time frame accountability for days lost when encountering a delay, even a lengthy delay, in obtaining information from a recipient who is otherwise operating in good faith.

While steps should be taken to prevent backdating, the incorrect application of the tolling provisions had a more profound negative effect on OCR achieving the objective of the Adams order -- case processing within defined time frames.

VI. RECOMMENDATIONS

1. OCR staff responsible for case processing activities should be provided detailed written guidance regarding implementation of the Adams order, particularly with respect to those provisions relating to issuance of letters of findings (LOFs) and tolling of time frames. A training program should be developed for regional OCR staff based on this written guidance.

2. Procedures should be developed and incorporated into the Investigative Procedures Manual (IPM) which require: (1) timely regional staff requests for tolls; (2) adequate and timely review of tolling requests by legal and management staff; (3) use of a form that provides adequate file documentation of the need for initiation or continuation of a toll; and (4) a "tickler" system that prompts periodic evaluation of the need for continuing a toll.

3. Procedures for documentation of the dates of actions related to compliance with the Adams order should be developed and incorporated into the IPM. The procedures should include the maintenance of standardized logs or other records showing the dates that acknowledgment letters and LOFs are approved at various staff levels, as well as requirements for signing and dating file copies of such documents to indicate clearance.

4. A study of the procedures followed by regional offices in processing complaints and compliance reviews should be undertaken, and any actions determined necessary to increase the efficiency of case processing should be initiated. Case processing procedures set forth in the IPM should be simplified and streamlined where possible. In addition, reporting and other administrative requirements presently imposed on the regions should be reviewed to ascertain whether any of these requirements could be eliminated, thus enabling regional staff, including Regional Directors, to devote a higher percentage of time to case management activities.

5. A process should be established for the periodic audit of regional case files and records to validate data entered into ACIMS regarding dates relevant to compliance with the Adams order and tolling of Adams time frames. A staff person should be designated by the Assistant Secretary to organize, plan and coordinate the periodic audits. To the extent possible, regional staff should conduct the audits under a system of peer review.

6. The Analysis and Data Collection Service (ADCS) of OCR should review the findings set forth in this report and ascertain the extent to which the tables of data contained in the Semiannual Report to the Adams and Weal Plaintiffs (April 1, 1986 - September 30, 1986) must be revised based on the information developed in the regional reviews. ADCS should submit a report to the Assistant Secretary setting forth the steps which would be necessary and any additional information it would need, to recalculate the tables of data contained in the Semiannual Report.

7. The results of the reviews, including the comments of the (A)RD's may be evaluated in determining whether, under all the circumstances, any action is appropriate with respect to employees who had responsibility for the incorrect practices outlined in this report. Full consultation with General Counsel and the Office of Personnel should be obtained and, to the extent any action is deemed appropriate, standards developed and uniformly applied. Regardless of whether such action is considered appropriate, some current (A)RDs should be required to include, as part of their PMRS agreements for this year, special initiatives designed to address findings which are the subject of this report.

Mr. Weiss. Does the *Adams* order in any way permit or justify such backdating?

Mr. Chambers. Not at all; what OCR has done is an attempt to circumvent the court order.

Mr. Weiss. Is backdating an illegal violation of the order?

Mr. Chambers. I would think it is in clear violation of the order.

Mr. Lichtman. There is no question it is a violation of the order. The thing I would like to add, though, is that OCR has claimed in the last few years a much higher rate of compliance with the timeframes, but that claim, of course, is now entirely suspect if the bases for that claim are assertions of compliance which were fraudulent, that is, were based on backdated letters of findings, backdated letters of acknowledgment.

How can the court or the plaintiffs accept these recent claims of compliance when the OCR and the inspector general themselves have concluded that the basic data are false?

Mr. Weiss. The inspector general's investigations, as some of you indicated, found more than just backdating. It found that OCR staff contacted complainants and persuaded them to withdraw complaints solely because the investigation of the cases exceeded the *Adams* deadlines.

Is there any justification for persuading the complainants to withdraw allegations of illegal discrimination solely for the purpose of meeting the timeframe requirements?

Mr. Chambers. None whatsoever.

Ms. Greenberger. I might add on that point, Chairman Weiss, that not only is there no justification for it, but the order also had certain protections not only dealing with timeframes, but also dealing with due process protections for complainants because there had been evidence of past abuses.

Certainly in the *WEAL* case and the *Adams* case as well, OCR was riding roughshod over complainants' rights. Therefore, this whole effort goes directly contrary not only to the spirit of the order, but also the letter of the order.

Mr. Weiss. Under the court order, such contacts with witnesses would in fact be illegal, is that correct?

Ms. Greenberger. Well, certainly the effort to try to have them withdraw their complaints rather than deal with the evidence of discrimination goes directly contrary to the order.

Mr. Weiss. During the course of the *Adams* litigation, have there been any previous instances of backdating or of persuading complainants to withdraw charges?

Mr. Chambers. Prior to the *Adams* litigation?

Mr. Weiss. Prior to these most recent instances.

Mr. Chambers. I don't recall any evidence, but—the only evidence that I recall of that occurred within the past 2 years.

Mr. Weiss. That is backdating, but Ms. Greenberger, you cited previous instances of attempts to persuade?

Ms. Greenberger. The *WEAL* case had a slightly different history than the *Adams* litigation. Problems dealing with sex discrimination in accordance with the timeframes were the same. But some problems were a little different. In our allegations originally when the case was filed in 1974, part of the problem had been some improper efforts not only to drop complaints, but to convince complainants to settle for very meager remedies and that sort of thing, and that was the basis for some of those protections in the order.

Since the order was in effect, we did not hear of any of those problems to the degree that we began to hear of them in the last few years when the Office for Civil Rights has been trying to get out of the court order, beefing up its record before the court, to make it appear that they are complying with the court order, and that's when we began to hear problems of these efforts to get complainants to withdraw their complaints.

Mr. **Weiss**. In your opinion, what would happen if OCR requirements under the *Adams* order were lifted?

Mr. **Chambers**. I think that we would have a very difficult problem of ensuring equal opportunities for minorities in higher education.

With the lack of enforcement we have seen over the past few years, we have begun to see erosion of opportunities for minorities, and I think it would just become more egregious with the *Adams* provisions being lifted.

I think that enforcement of the *Adams* order is absolutely essential to ensure some mode of opportunity for minorities in higher education.

Mr. **Lichtman**. After that, I have just one additional point. That is precisely the issue that was before Judge Pratt in 1982. The Government moved to remove the timeframes altogether, asserting that they were overly rigid and inflexible and were actually inhibiting the effective performance of the agency.

The judge heard them out for 3 full days of testimony and concluded that they were absolutely essential to keep enforcement moving. We quoted at page 13 of my statement the judge's language that perhaps the particular timeframes aren't the perfect ones, the ones that are in the order, but some timeframes are necessary. Without them, he, Judge Pratt, is convinced that the agency would no longer enforce the statute and, of course, when you have enormous delays for schoolchildren, those schoolchildren wait and you have a classic example of justice delayed becoming justice denied.

Mr. **Weiss**. Ms. Greenberger.

Ms. **Greenberger**. We also quoted Judge Pratt, on page 4, I think a different quote. He said, ". . . the substance of compliance will eventually go out the window" without court review.

Mr. **Weiss**. Now the *Adams* litigation resulted from OCR's unwillingness to enforce title VI compliance in six State systems of higher education, is that correct?

Mr. **Lichtman**. Originally there were more, but for various reasons, the numbers have shifted. For example, two of the States, Louisiana, Mississippi, became the subject of judicial proceedings by the Department of Justice, so the number for various reasons became six.

There are others that are involved at different stages, but the particular order that we have been referring to in March 1983 specifically talks about winding up the desegregation effort in 1985, 1986 in the case of six States.

Mr. Weiss. The 1973 *Adams* order directed OCR to obtain plans from States that had operated illegal systems of public higher education, is that correct?

Mr. Lichtman. Yes.

Mr. Weiss. The order was upheld by the Federal Court of Appeals.

Did the Court of Appeals stress that the States eliminate the remnants of illegally segregated systems?

Mr. Chambers. Yes.

Mr. Weiss. According to the Court of Appeals' decision, would good-faith efforts alone eliminate those vestiges or be sufficient to meet compliance with title VI?

Mr. Chambers. I think not. I think that as Mr. Lichtman pointed out in his testimony, the court is looking for results, and simply going off on good-faith compliance with lingering vestiges of segregation as we see in many of these States would be a tragedy after all these years of litigation, but I think the answer is that good-faith compliance should not be the standard for determining whether there has been compliance with title VI.

Mr. Weiss. The *Adams* court order formulated criteria that the States would have to meet in order to effect compliance with title VI, is that correct?

Mr. Chambers. That's correct.

Mr. Lichtman. Yes. The problem was that the agency had not defined what was required. The agency then, after being ordered to do so, issued criteria in 1977 to define what was required, and the judge said secure plans that conform to those criteria. That was done, and the plans that we are now talking about, the goals and commitments in those plans, are pursuant to those criteria directed by the court.

Mr. Weiss. Those criteria were later approved by the *Adams* court and used as the basis for subsequent plans ordered by the court in higher education desegregation cases involving States other than the original six States, is that correct?

Mr. Lichtman. Criteria were applied by HEW to other States as well.

Mr. Weiss. Then the court approved of the numerical goals contained in the criteria, is that correct?

Mr. Lichtman. Well, it is important to distinguish the court's role here. The court has made the judgment that it was essential that there be standards for the States.

HEW then in response to the court order OCR issued those standards. The court went further and said once you have issued those standards which are embodied in the criteria, secure plans that conform to those standards, and that's the way the issue developed historically.

Mr. Chambers. I would also add to that, though, the decision of the sixth circuit in *Dye* v. *Tennessee* where the court clearly approved of goals and timetables for achieving the objectives of title VI.

Mr. Weiss. The desegregation plans for the State systems of higher education contain numerical goals. How are those goals developed?

Mr. Chambers. In consultation with the States and HEW.

Mr. **Weiss**. Can you give us the background on the creation of blue ribbon commissions which were set up for that purpose?

Mr. **Lichtman**. The way it began was that in 1973, the Court of Appeals had directed that there be dismantlement of the systems.

In 1974, the States submitted plans which admittedly according to OCR did not accomplish any actual desegregation. The court made the judgment in 1977 that part of the problem was that the agency had never defined standards for statewide desegregation and directed that there be standards.

The standards were then promulgated by the Office for Civil Rights after a very elaborate process of consultation, discussion, negotiation, among all interested parties, including all of the affected States, and after that entire process was complete, the OCR utilizing its expertise, issued these criteria in 1977, and it was those criteria which then became the standards for these plans which we are talking about today.

Mr. **Weiss**. But specific numerical codes were in fact set by the States themselves by criteria they submitted to OCR, is that correct?

Mr. **Lichtman**. That's correct, although the criteria commenced the process by indicating that in order to dismantle, it was essential that the vestiges be removed and that a good measurement of ascertaining that is the extent to which these States meet certain goals in very defined areas, and then the States themselves solemnly committed themselves in these plans to meet these goals which are set forth in the criteria, so it is correct to say that the States themselves have agreed to meet these commitments.

Mr. **Weiss**. Have there been any changes in Federal law since the 1983 decision that would allow the vestiges of de jure, segregated-State higher education systems to be considered eliminated without meeting the goals contained in the desegregation plans?

Mr. **Chambers**. No. That is referred to in my written testimony. The law has not changed it at all. The law today is basically what it was in 1978.

Mr. **Weiss**. Desegregation plans for the original six States involved in the *Adams* litigation, and four other States, expired during the 1985–1986 school year.

Is OCR required to evaluate the 10 States and issue findings regarding their compliance with title VI?

Mr. **Chambers**. Yes.

Mr. **Weiss**. Have you been monitoring State progress in meeting the goals of the desegregation plans?

Mr. **Chambers**. We have. We have not completed that. OCR has failed in several instances to provide us the data to complete our analysis.

For the data that we have received, we have begun doing some analysis of that, and we just have not completed all of that at this stage.

Mr. **Weiss**. Last month, OCR issued factual summaries to the 10 States. It appears that, based on those factual summaries, OCR intends to elicit comments from the States, and then issue findings on title VI compliance. From a legal perspective, are those factual summaries sufficient to base findings on?

Mr. **Chambers**. I think Mr. Lichtman referred to that earlier on. I would add this, however—the answer to your question is no.

The problem is I don't think OCR has really made appropriate findings, that OCR has looked at all of the data submitted and done a proper analysis of the data submitted, that OCR has not applied the appropriate standards for determining whether those facts that it summarizes show compliance with the guidelines and the plans that the States have submitted.

I think that stepping back and applying those standards and looking at the factual developments in these States under consideration, that one would find that the States are not in compliance and have not carried out the promises they made, and that OCR should proceed with a review of those facts and develop conclusions and should carry out its responsibility under title VI by instituting compliance.

Mr. **Lichtman**. Let me add to that we have only had the factual summaries for a very short time. Between the receipt of those summaries and this hearing this morning, we have looked very carefully at one State as an example, the State of Georgia. We have summarized our conclusions in my prepared statement.

In that one instance, and in the others in general, the factual summaries on the basis of our preliminary review are very inadequate to test the compliance of these States because by and large, they ignore the whole question of goals and the extent to which the goals have been met and the extent to which actual desegregation has occurred.

By and large, these factual summaries focus on particular efforts, particular measures by the State, often ignoring those measures in which there have been problems.

If one compares, as we did in the case of Georgia, the evaluations by OCR a year or two ago with these new factual summaries, you see that they focus on those in which the State has made some progress and ignored those in which the State was having problems. That's just focusing on measures and efforts. By and large, they also disregard the results. They disregard whether or not the goals are being met or to the extent they mention goals, they subordinate that to a tiny little part of the factual summary.

We will do a very elaborate analysis for all six States within the 60-day comment period that the OCR has set up. We have already completed that for Georgia. We will do it for the other five, and we will be more than happy to submit our conclusions to the committee when we have completed the analyses for all six States.

Mr. **Weiss**. I appreciate that. Would you say that the factual summaries which OCR has now sent the States are equivalent or serve the same purpose as the required evaluation?

Mr. **Lichtman**. They don't have the bottom line. They are nothing but a series of comments on how the States have done on particular measures. They often ignore whether or not the goals were met. They often ignore whether or not there is desegregation and, most important, they say nothing about whether or not OCR believes the States to be in compliance or not in compliance. By themselves, they don't tell you very much.

Mr. **Weiss**. Thank you very much. Mr. Lightfoot.

Mr. **Lightfoot**. Thank you, Mr. Chairman. I thank the three of you for being here this morning.

The first question I would like to direct to both Ms. Greenberger and Mr. Lichtman.

Ms. Greenberger, in your testimony a moment ago you called our attention to page 6, and I think it goes on for about three or four pages about the inspector general's findings, and Mr. Lichtman, at page 11 in your prepared testimony you also referred to information in the IG report.

Would you share with us where you obtained that information, how you obtained it?

Mr. **Lichtman**. I received it from friends in the media.

Mr. **Lightfoot**. Friends in the media. Ms. Greenberger.

Ms. **Greenberger**. I received it from Mr. Lichtman.

Mr. **Lightfoot**. The reason I asked is that when I requested a copy of the report from the IG's office, a letter from the IG stated that "the investigation has not been concluded administratively, and I respectfully request your cooperation in maintaining its confidentiality."

I guess we are talking about fairness and equity and equal opportunity here, and it troubles me that we are using information in a report that supposedly was confidential.

How much of your findings do you base upon things you find from the media?

Mr. **Lichtman**. Pardon me?

Mr. **Lightfoot**. How much of your opinion is based then upon information gained from people in the media?

Mr. **Lichtman**. It is only a tiny part, Mr. Lightfoot. Most of the conclusions were made by OCR in the report to the court, public documents filed with the court last fall and this March, and in a letter sent to each of us, accompanying reports. The inspector general's report only relates to one region, region I. OCR went on and investigated the matter across the country, and OCR itself found in reports made public to the court that in the majority of the regions across the country, the same thing is occurring, so that our conclusions are only based to a tiny extent on the inspector general's report.

Ms. **Greenberger**. I might add with respect to my testimony that much of it deals with the Office for Civil Rights' report which was provided to us as counsel for the *WEAL* title IX plaintiffs, as Mr. Lichtman just stated. All of their findings with respect to the Office for Civil Rights are consistent with the inspector general's report as we were provided it. If you look at my final conclusions, it is my view that the backdating is really a symptom of a far larger problem, and what I really hope that this subcommittee will look at is what I view as the underlying problem with respect to enforcement in general. Certainly, we had been told by some of our own clients, as well as others personally as early as last year, about problems with respect to complainants who had been urged to drop their complaints and brought this to the attention of the subcommittee last year. So that I also must say the inspector general's report which dealt only with backdating and this problem and only in region I is really not even the tip of the iceberg.

Mr. Lightfoot. I really don't have any disagreement with you on the impropriety of the backdating. I don't think there is anyone up here that doesn't condemn that type of thing, but it just troubles me a little that you are trying to make a good strong case here for the situation, and we are using information that you obtained through the media. If anything—I am not an attorney. From the layman's opinion, I think it weakens your case, and you are using information that supposedly is confidential and hasn't been released as yet.

In your statement, Ms. Greenberger, you also say the Department of Education sought to destroy title IX by urging the Supreme Court to rule in favor of the narrow interpretation of title IX.

Ms. Greenberger. Yes, that's right.

Mr. Lightfoot. What is your opinion of the Department's proposed legislation to extend title IX coverage to the entire institution as it applied before the——

Ms. Greenberger. I think the administration's proposal is very troubling. In fact, there were hearings on that proposal last year that were held in the House, very extensive hearings, and the Assistant Secretary for the Office for Civil Rights then was Mr. Singleton. He came and testified as to the way that he interpreted this piece of legislation. He described what he thought would be covered if this legislation were enacted into law, and he gave some examples of what would be excluded from coverage. Some of those examples were recruiting efforts for intercollegiate athletics and fund raising efforts for intercollegiate athletics. He viewed those activities as noneducational programs and therefore not covered under that administration supported piece of legislation.

My written comments with respect to the importance of the *WEAL* order timeframes demonstrate that there has been a history that enforcement with respect to collegiate athletics has been one of the very serious problems in title IX. It has often been put on the back burner, and the timeframes have had a critical impact in having policies issued and having those complaints and compliance reviews that dealt with intercollegiate athletics finally handled. I think as a result we have enormous pride in our country now with respect to women athletes. We have seen what they have done in the Olympics and elsewhere, and for the Assistant Secretary of the Office for Civil Rights, and the Department of Education to come before the House committee and support legislation which in his view would not deal with recruiting efforts and fund raising efforts for intercollegiate athletics I find terribly troubling. Moreover, that's only one of the examples of what he said would not be covered under that bill.

Mr. Lightfoot. I guess I am confused in that if I am interpreting correctly what you said, and correct me if I am wrong, that your feeling is that the Department of Education was in essence trying to destroy title IX through that very narrow interpretation?

Ms. Greenberger. Yes. I will give you a little bit of history if you like. What happened was that Grove City College refused to promise to comply with title IX and wanted to receive Federal student aid money nonetheless. It began a lawsuit during the previous administration to establish that it had no title IX obligations at all.

The District Court and the Third Circuit Court of Appeals held that the college was covered by title IX and that all of its operations had to comply with title IX. The college filed petition for certiorari with the Supreme Court, and this administration switched the long-standing position that the Government had held in court cases in the past as well as in that case in the district court and in the Court of Appeals, and argued before the Supreme Court for the first time that while the college was covered, only the financial aid department was covered, not the rest of the college.

As a result, in that litigation——

Mr. LIGHTFOOT. Could I interrupt you just a moment? That is the point I am trying to make, that only the financial office was covered or the rest of them were not, OK. What they are proposing to do is to expand title IX to the entire institution, cover everything, so in fact isn't that proposal trying to expand title IX rather than confine it?

Ms. GREENBERGER. I understand your question full well because there is a lot of rhetoric about the fact that in this legislation they are trying to restore the coverage that they asked the Supreme Court to narrow but when you come to the fine print and the footnotes and the Assistant Secretary Singleton testimony as to what he thinks is meant and how he would interpret the legislation if it were passed, it wouldn't cover all the operations of the Grove City College or other educational institutions. He gave a list of examples of excluded activities, and one of the examples I remember quite well because of my work in title IX was intercollegiate athletics, which has been a key aspect of coverage with respect to title IX over the years. Therefore, it doesn't cover all the activities of a college or an educational institution, and that is one of its very serious problems.

Mr. LIGHTFOOT. Mr. Singleton is no longer there, and we do have——

Ms. GREENBERGER. It is the same legislation nonetheless. It hasn't been changed.

Mr. LIGHTFOOT. Let me switch back to Mr. Lichtman for just a moment.

If the enforcement proceedings are initiated and as a result the Federal funds are cut from those higher education institutions who are found to be out of compliance, is that really going to make sure that black youth have equal opportunities to further their education?

Mr. LICHTMAN. That, of course, is the issue that has been before this Congress ever since the passage of title VI in 1964. The argument is always made that if you cut off the funds, you hurt the victims of discrimination more than anyone else.

The whole theory of title VI has been that the credible threat of cutoff will make the difference, that it won't actually be necessary to cut off the funds or if the funds are ever cut off, the discrimination will cease very quickly, and the funds will start again, and that indeed has been the history.

In the elementary and secondary school districts in the sixties and to some extent in the very early seventies, there were a few, a lot of cutoffs in the sixties, just a handful in the early seventies. In every case where there were cutoffs, they—not every case, all but one or two, the funds were restored almost immediately in most cases because the discrimination ceased.

In most cases, it never becomes necessary. The administrative process that leads to the funds cutoff is a very long, elaborate process. The States have very ample opportunity to come into compliance in the process, and in most cases where the administrative fund cutoff mechanism was commenced, the discrimination ceased long before you ever got to the cutoff of funds. In other words, the statute, the theory of the statute does work, and the problem is that OCR no longer has any credibility. The States know full well they have no intention to ever even commence these proceedings, let alone cut off the funds, and that is why the States aren't responding, the statute isn't working, because OCR is today a paper tiger, but no one wants these funds ultimately to be cut off.

I think history tells us that a credible threat of cutoff yields a cessation of the discrimination.

Mr. **Lightfoot**. Do you think there is any possibility that goals in the State plans were not all that realistic?

Mr. **Lichtman**. Well, some of the goals—first of all, the goals brought out earlier have been agreed to and set by the States themselves.

Secondly, some of the goals have been met. We have, for example, in the Georgia example which is in my testimony, we have in the graduate and professional area, some of the goals were met.

I think the verdict is not in yet on what happens with respect to goals when the States truly in good faith implement their measures and effectively permit their measures. In those instances where they have done so, in some of those instances where they have done so, they have met those goals, so that I am not at this point prepared to say that the goals are unrealistic.

Mr. **Lightfoot**. As far as meeting the quotas are concerned, looking through your testimony, we are very properly concerned with the number of black students going into white schools—what is being done on the other side of the coin, white students being admitted to traditionally black institutions?

Mr. **Chambers**. I think that we will find that in the traditionally black institutions, white students are moving into the traditionally black institutions in better numbers than what we see in reverse.

One can look at Tennessee. One can look at Georgia. One can look at a number of the Southern States and see this trend.

This is one of the reasons that I raised at the close of my testimony the need for focusing on what is happening at the traditionally white institutions and not place the entire burden on the black institutions for compliance with title VI.

I would like to go back to the question you posed with Mr. Lichtman just a moment ago and say that I served on a board of governors of the State and recall the period that we went through developing the goals and timetables. I also followed—that was in North Carolina—the settlement of that case with the Department of Education.

I thought that the goals were really more than realistic, and they could have been achieved, and as the State settled its plan with the Department of Education, I was really disturbed that the goals were so low, and I think that rather than not be in a position of saying that those are unrealistic, I would say those are very realistic, and that if we are going to ensure opportunities for minorities in higher education, we are going to have to do much more than what we are doing today to bring minority students into the higher education system, and that those that have been set and are involved in the States now at issue are those that we should see achieved, and I think they can be achieved.

Mr. **Inhofe**. Mr. Chairman, if you would allow me to do so, I am operating under a little bit of a handicap in that we are going into session and I have a commitment at the very beginning of our session on the floor of the House.

However, I will be back, and I assume that you are going to be around for awhile, but Mr. Lichtman, will you help me find something in your written testimony? You used the word "liar" or someone lied in OCR. Can you give me the page number so I can get the exact reference to that?

Mr. **Lichtman**. I was referring to the backdating. I don't know the—did you say in the prepared statement?

Mr. **Inhofe**. No. You did in your statement, and I assumed that you were reading your statement, from the prepared statement that had been submitted to the committee.

Mr. **Lichtman**. I was paraphrasing my statement, but I am sure my reference was to the false submission of information with respect to when letters of findings were issued, when letters of acknowledgment were issued, in other words, the backdating issue we have been talking about.

Mr. **Inhofe**. Well, that wasn't the word you used, and I wanted to find to whom you were referring as to who was lying so that if I get back in time and they are testifying, I would like to pursue that point if you could clarify that for me.

Mr. **Lichtman**. My reference was to those persons who are with OCR who admittedly have backdated. That is, they have represented in these reports to the plaintiffs and ultimately or indirectly to the court that certain compliance steps were taken on certain days when in fact that did not occur.

OCR has itself found, the inspector general has found that this has happened in the majority of regions, so my reference was to those officials who engaged in this misreporting, misrepresentation, lying if you will, about when they took certain compliance steps.

Mr. **Inhofe**. Are those individuals to whom you are referring here today? Will they be testifying, or do you know?

Mr. **Lichtman**. I don't know. OCR itself has found, the inspector general itself has found that this happened at the regional level, and looking at the list of witnesses, I don't see any. I don't know that there are any OCR regional officials.

Mr. **Weiss**. If I may, for the record, we have not invited any of the witnesses themselves who may be charged with violations of the criminal statute.

Mr. **Inhofe**. Let me pursue something else. One of the States listed, of course, is Oklahoma, and following up on Mr. Lightfoot's last question wherein he was talking about predominantly black higher education institutions and the success that they have had in integrating those by encouraging white students, and I think Mr. Chambers stated that there has been success in that area. In the

State of Oklahoma, Langston University is a predominantly black institution. Have they achieved any success, Mr. Chambers, or are you familiar with that particular institution, in recruiting white students?

Mr. **Chambers**. Not in any detail; Mr. Lightfoot's question was in comparison with white institutions with black institutions.

Mr. **Inhofe**. A relative question.

Mr. **Chambers**. Right. I think that the general information demonstrates that my answer was correct, that I would assume that is true of Langston as well.

What I have seen of the black institutions, we have white students, white faculty members in numbers, and many of the black institutions, I think justifiably so, are concerned that that trend is not being replicated at traditionally white institutions.

Mr. **Inhofe**. I think that in the testimony that I submitted in writing from the Oklahoma Secretary of Education, Dr. Smith Holt acknowledges that we have not been successful in the case of one institution of higher education in Oklahoma—Langston University—in attracting white students. We have tried a number of other efforts, including to include the campuses in both Tulsa and Oklahoma City, and have not, without including them, I would say we have not been successful.

Would you suggest a remedy if you were to come to the conclusion that yes, we have done a good job in Oklahoma at the other institutions, but not at that institution. If you came to the conclusion that the quality of education was inferior at Langston University and that we have indeed been unsuccessful in our integration efforts at Langston and that we are unable to keep an enrollment adequate to keep the institution open on a feasible basis, perhaps a better solution might be to close the institution and then redistribute students there to other institutions and therefore enhance the ratios at those other institutions?

Mr. **Chambers**. I can't help—as a general proposition, my answer would be no. I think that what you pose is the same idea that was followed by many States in the desegregated elementary and secondary schools.

The HEW, or Department of Education now, guidelines talk about the need for enhancing the traditionally black institutions. The court and the Department of Education appreciated that effort to eliminate the vestiges of the past were generally placed on black students, black institutions, and that black institutions could make a contribution in the higher education effort.

The problem was the States, and that included Oklahoma, were not supporting those institutions and had not supported those institutions as they sit, and the guidelines required that States develop programs to enhance the traditional black institutions, the States eliminate duplications of programs, and where we have seen some efforts for that, we have seen white students moving into the traditionally black institutions, and I think that that is what should be required rather than now raising a red herring that those schools should be closed.

Mr. **Inhofe**. Let me just go back with a followup question.

In the State of Oklahoma, at Langston University, a number of years ago, 15 years ago, at that time I was serving in the State legislature. It became quite an issue and it was not—and I would challenge you on your statement that it may be true in other areas in Oklahoma. It was not, as far as the effort and the amount of money that was put into the university, the amount of intention in order to help it to reach its enrollment minimums, to increase, enhance the quality of education and to achieve integration within the institution, the efforts failed, but the efforts were there in actual dollars. I would suggest that if you go back and research that, you will find that this perhaps is an exception to what you consider to be the normal rule.

At that time, one of the solutions was to close it down, and it was among other organizations and the NAACP that were making most of the objections to the closing of that institution. I would say that the rest of the State institutions have been very diligent in their efforts to integrate, and I think we have achieved some goals that other States have not.

Mr. CHAMBERS. Mr. Inhofe, I think that if one steps back even in Oklahoma and looks at the support provided the traditionally black institutions, one would appreciate the providing an equal dollar per student for those schools as may be provided for the traditionally white institutions is not going to solve the problem. What you suggest about Oklahoma is to me what has occurred in several other States, and I refer to North Carolina because in my personal experience in North Carolina, in order to bridge the gap for what we created years ago, we had to put much more than a dollar, equal dollar per student in those institutions. We also had to look at the programs.

I am not certain you are suggesting that with the efforts to enhance Langston, you eliminate the duplications of programs with the University of Oklahoma, Oklahoma State, or that was a major area of concern. I am not sure you are suggesting that you brought your library books up to the University of Oklahoma. I am not sure you are suggesting that you created the perception of students in Oklahoma, the idea that Langston offered a comparable program that was offered at the University of Oklahoma, and until we get to the point of enhancing those institutions to the point that they are truly comparable and able to offer a comparable program, I don't think we have solved the problem that I was trying to refer to.

Mr. INHOFE. One last question, Mr. Chairman, and I am going to try to get back to hear the rest of the witnesses. Mr. Chambers, if an institution does all these things you suggest, and does them to the satisfaction of the most critical individual, and it fails, would you say the last recourse is to shut down the institution in favor of the other institutions so that those individuals who you say are getting an inferior education would then get a comparable education?

Mr. CHAMBERS. I don't think that we really, we get to that point, Mr. Inhofe, with all respect.

What I have seen of institutions that have been enhanced, we have white students beginning to accept enrollment in those institutions. We have white faculty members beginning to accept employment, and we have a changing image of those institutions in the State, and I don't see that effort failing if it is carried out fairly with the proposal.

I think that you don't put it in the perspective of well, if all this fails, do we then close Langston? I think we say if we are trying to develop an educational system for all children in the State of Oklahoma and we find it appropriate, race not being considered, to modify programs in particular institutions, then we modify those programs, and that might be at the University of Oklahoma, or it might be in Langston, but I think that it is not the proper way of approaching the thing of saying well, if we do A, B, C, or D and that doesn't work, should we then close Langston?

I think say we do A, B, C, and D and we don't have the type of program or enrollment at any institution in the State, then we look at the next best thing.

Mr. INHOFE. Mr. Chambers, but if we do A, B, C, and D, as we did back some 15 years ago, and it doesn't work, and if—I am not saying there is, but if the quality of education continued to be inferior during this period of time until finally some day what you want to happen is going to happen, aren't those students getting an inferior education?

I am really concerned about that, and this is a very genuine concern that was expressed by blacks and whites in the Oklahoma State Legislature during the time that there was some consideration of closing the institution—yes, a few years from now, 5 years, 10 years from now, the problem will be resolved. What about those students in the meantime? And this is a concern I wanted to share with you because it is one that was expressed universally at that time at least within the State, and there probably were other States also where that was happening, but it wasn't just a matter of dollar for dollar. It was making a concerted effort, more than was made in other institutions.

Mr. CHAMBERS. Providing a quality education for all children in a particular State is an objective I think of all of us. I really am not in a position to say what was done in Oklahoma with respect to Langston or other institutions. I don't really know those details, but I think that the State itself has an obligation, however, of enhancing the programs at institutions it presently believes are not offering the kinds of programs that ought to be offered to ensure that those programs are enhanced to make them competitive, and I don't think that just closing the school is the answer.

I don't know where the black students are going to go in Oklahoma. I don't know that they are going to get into the University of Oklahoma and I don't know that they are going to get into the other institutions of the State. I don't know where the black faculty members are going. I don't know where the black administrators are going. We haven't solved that problem, and I don't think we solved it in Oklahoma.

I think that we ought to look at a progress that is going to ensure fair and equal employment for black faculty members and administration, fair and equal opportunities for enrollment upon graduation from colleges and universities, and until we get to that point, I think that we start looking at ways to enhance all of the programs to ensure that objective.

Mr. INHOFE. Thank you, Mr. Chambers. I do think we are making progress. Our statistics, if you look at the enrollment statistics, are impressive, and at least show a great effort has been made in my State.

Mr. **Lichtman.** If I could just add one point—your concern about today's students in Oklahoma is precisely Judge Pratt's concern in the *Adams* case.

His belief that there has to be timely enforcement is precisely premised on the concern for today's students. If OCR is permitted to delay and delay, we get enforcement so far down the road that it does not help today's students. You really put your finger on the basis for the timeframes and the basis for the need for timely action in higher education as well.

Mr. **Weiss.** Thank you very much, Mr. Inhofe. We are also joined by one of our distinguished members of the subcommittee, Mr. Konnyu.

Mr. Konnyu, any questions or comments?

Mr. **Konnyu.** Thank you, Mr. Chairman. Mr. Chambers, I would like to continue in the general direction that Mr. Inhofe is heading, but shift the ground from Oklahoma to Washington, DC, and Howard University.

According to the fall 1984 college enrollment survey, Howard University had an undergraduate enrollment of 6,812 black students, 32 white students, and 32 Hispanic students.

I compare that number to Lincoln University in Jefferson City, MO, a town where I lived for 2 years when I was 12 and 13, the first 2 years I spent in America. Since that date when I lived there, about 15 percent of the students at Lincoln University, a traditionally black university, have become white students.

At Howard University there seems to be no progress. Do you feel that, that this 99.9 percent purity is a violation of title VI, first, and second, what steps could or should be done by Howard University to improve its efforts in this area?

Mr. **Chambers.** Well, first of all, I don't think those statistics demonstrate that Howard is not complying with title VI. Howard, I know historically, has been open to all students, and Howard has made some efforts to bring nonminority students to the campus.

Howard has, I think, an excellent record in terms of the employment of personnel and what we have then as you have described is a substantially higher percentage of minority students that are nonminority students at Howard in those particular figures.

If one looks at some of the professional schools at Howard, I don't think your example will hold up. I think if one looks at the law school, one looks at the dental school or the medical school, one begins to see a different picture.

Mr. **Konnyu.** You are shifting from my question which related to undergraduates to the graduate students.

Mr. **Chambers.** The overall university, and I think that is what we looked at, and then we compared what is happening citywide here or within the District in terms of minority opportunities and undergraduate enrollment, and I think that looking at the broad issue, we get perspective of what is occurring and what might occur that would improve opportunities for all students within the District.

Mr. **Konnyu.** Now that issue of a half of, one-half of 1 percent of the enrollment being white at Howard University as it relates to undergraduates, your answer doesn't make sense in terms of the issue that is reversed in other States with other institutions. It doesn't seem to be consistent.

Is Howard University to be treated intellectually different in terms of arguments than let's say Lincoln University or some other institution where real progress has been made?

Mr. **Chambers**. Mr. Konnyu, I think if one looks at each institution within the context of its history—now if I look at the University of Georgia or the University of Florida, I know that those institutions were originally established for white students, and then I asked whether those schools have made some efforts to bring minority students on to those campuses and begin to measure there, and I begin to measure based on the statistical data that the enrollment reflects——

Mr. **Konnyu**. You know what I am trying to point out, Mr. Chambers. Lincoln University made 30 times better progress than Howard University, and it seems to me that the prima facie case, if you can base it on numbers, and that's I know dangerous from time to time, is that Howard University with respect to undergraduate enrollment is simply making no efforts whatsoever.

Mr. **Chambers**. I would disagree, knowing the degree of Howard, and I also know a little bit about Lincoln University and why we have the representation there, and I know a little bit about what is happening at the University of Missouri and the minority opportunities at the University of Missouri, and one can appreciate the concern in Missouri, particularly at Lincoln, about the efforts of the State to improve opportunities for minorities in enrollment and in employment.

The Langston situation there, I think, raises a real question about whether the State is going to ensure that minorities——

Mr. **Konnyu**. I'm sorry. Which situation?

Mr. **Chambers**. At the university in Missouri—Lincoln. I said Langston. I meant Lincoln, where the State is really committed to ensuring minorities have an opportunity in education and the total educational system.

Now in Howard, again I notice that Howard had made efforts to recruit minority students, nonminority students, and I know that it has had some success with them, and I know that in many of the schools we have I think substantial nonminority enrollment, and so I don't condemn Howard at all.

Mr. **Konnyu**. Half of 1 percent is substantial?

Mr. **Chambers**. You are talking about undergraduate. I don't really isolate a program. If one goes to Harvard and asks if Harvard is making an effort to bring minority students into the schools, and isolate a program, one can raise a serious question.

Mr. **Weiss**. We are going to break at this point. The 10-minute warning has sounded, as there is a vote on the floor. The subcommittee will remain in recess for about 10 to 15 minutes after which time we will resume our questioning.

Mr. **Konnyu**. Thank you, Mr. Chairman. I am finished with my questions.

Mr. **Weiss**. Mr. Lightfoot, do you have any further questions of this panel?

Mr. Lightfoot. No, sir. I would like to make one quick comment to Mr. Chambers.

If we had the ideal, if you were the president of a black university and I were the president of a white university, then our overall goal would be that we would try to put together the type of a program that would attract students to our two schools, you and I would be friends and be in friendly competition, and I would try to put together a better program to attract black students to my school and you would try to put together a better program to attract white students to your school, and the basic goal being the best possible education we could give to students, regardless of the university?

Mr. Chambers. I would agree with that.

Mr. Lightfoot. I think we are all headed in the same direction. We are just going on different roads.

Mr. Weiss. I thank you very much. The questioning of this panel is now concluded. Of course, you are welcome to stay with us for the balance of the hearing. When we resume, we will have the Acting Assistant Secretary for Civil Rights, the Honorable Alicia Coro, as our next witness.

[Recess taken.]

Mr. Weiss. The subcommittee is now back in session. We have some important work on the floor of the House today and so we will be interrupted from time to time for votes, but we will try to make those breaks as brief as possible. Some of our Members will be in and out because they will be attending to some of that business.

Our next witness will be the Honorable Alicia Coro, Acting Assistant Secretary for Civil Rights, U.S. Department of Education.

Welcome, Ms. Coro. If you would stand, please, and raise your right hand?

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Ms. Coro. I do.

Mr. Weiss. Thank you. If you have associates you want to join you at the witness table, that is perfectly OK. If from time to time you need to be filled in by the staff, I would ask that they be sworn in at that time.

Ms. Coro. Thank you.

Mr. Weiss. We have your prepared statement, and it will be entered into the record in its entirety. You may use your 10 minutes in whatever way you think is most appropriate?

STATEMENT OF ALICIA CORO, ACTING ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, ACCOMPANIED BY PHILIP KIKO, ACTING DIRECTOR, POLICY AND ENFORCEMENT DIVISION

Ms. Coro. Thank you, Mr. Chairman, and members of the subcommittee, thank you for the opportunity to testify about the efforts of the Office for Civil Rights to address two of the major issues presently facing the Office. Those issues are irregularities in the processing of cases by certain of the regional office staff, and higher education desegregation.

I would like to make certain statements before I take your questions. My testimony has been submitted for the record. I believe, however, that some basic information on these issues will help clarify matters for the subcommittee.

For the past 9 months, OCR has investigated and effectively dealt with the discovery of certain case processing irregularities in 6 of OCR's 10 regional offices.

I discovered this problem during a visit to the Boston regional office on Tuesday, July 15, 1986. At that time, I was given reports of unethical and unprofessional activities with regard to efforts to meet the *Adams* timeframes.

Specifically I was informed that certain regional officials in Boston had directed subordinate employees to backdate letters of findings, or LOF's, so that those documents were recorded as if they had met the relevant *Adams* timeframes.

In addition, I was advised of problems with regard to the inappropriate extension of certain tolled cases.

Now at the outset, I immediately reported the matter to the Secretary and to the general counsel. At the order of the Secretary, the files in Boston were secured. Within 3 days, I sent a team of OCR senior staff to Boston to investigate fully the situation in that regional office. I believe it is significant that this OCR investigation commenced immediately and it was at my initiation.

I reported the results of this Boston investigation to the Secretary on August 20, 1986. A summary of the results of this investigation was also reported to the *Adams* court and plaintiffs in September, and to the *Adams* plaintiffs again in October when we submitted the OCR semiannual report.

To date, I have not been officially contacted by the *Adams* plaintiffs with any requests for additional information and/or any comments they might have on this matter.

The OCR team found evidence to suggest that the Boston regional office sometimes had used improper procedures with regard to certain requirements of the *Adams* order. In some cases, dates reflected in the signoff logs were from 1 to 6 days after the date stamped on the official file copy of the LOF. This indicates that the actual issuance date was after the *Adams* deadline.

Shortly after the special Boston investigation was completed, I sent three other teams of OCR senior staff to the remaining nine regional offices to determine whether there were similar occurrences in any of those offices. I reported the results of this region-by-region investigation to the Secretary in December 1986 after a detailed report had been prepared for me by the team leader who oversaw the nationwide investigation.

Dating discrepancies were found in five of the remaining nine regional offices, in Atlanta, Dallas, Kansas City, San Francisco, and Seattle. In five of the nine regional offices, in Philadelphia, Atlanta, Dallas, San Francisco, and Seattle, cases were found to be routinely tolled or interrupted without an adequate basis. Some regions had inappropriately invoked certain tolling provisions and some continued the tolls well beyond the time that they should have, whether or not the toll had been appropriately initiated in the first place.

In March 1987, another report was filed with the *Adams* court advising Judge Pratt of the results of the nationwide investigation and of the various actions I have instructed the agency to take to cure the problems discovered.

Since July 1986 when these problems were first brought to my attention, I have implemented a number of policy as well as personnel changes to ensure that nothing like this ever happens again.

First, a plan has been developed for frequent audits of regional case files and records to validate data entered into the automated case information management system, or ACIMS, regarding dates relevant to compliance with the *Adams* order and the tolling of *Adams* timeframes.

To ensure that these objectives, the objectives of these reviews which are to be conducted without advance warning are not defeated, I request that you not ask me to discuss further details about these future audits.

Secondly, a special performance objective has been added to all of the regional directors' performance agreements which places personal responsibility upon each regional director for monitoring regional performance, specifically to ensure that time sensitive documents are dated accurately and that cases on toll status are reviewed periodically.

Detailed written guidance has been prepared for the regions regarding the implementation of the *Adams* order, particularly in the area of issuance of LOF's and tolling of the timeframes.

A study is being conducted of regional case processing procedures to identify opportunities for simplification.

A review is underway to assess current regional reporting and other administrative requirements to see whether their elimination or modification would enable regional staff, including regional directors, to devote a higher percentage of time to case management activities. The following is an illustration of the effectiveness of these corrective measures.

While on February 26, 1986, there were 258 cases nationwide in a tolled status, exactly 1 year later there were only 74. This represents a significant, 71 percent, decline in the number of cases being placed on hold, and more recently, as of April 21, 1987, the number of cases on toll nationwide has declined even more, to 62.

With regard to disciplinary action, I have admonished current regional directors who were in that capacity when improper case management practices occurred in their regions.

In Boston where the most pervasive mismanagement occurred, four of the five top managers in that office have been replaced. I fired one. One retired shortly before I discovered the irregularities. One was transferred to headquarters and subsequently resigned, and one was removed and reassigned to another position.

Finally, even if all of the cases identified as having some irregularity indeed resulted in a missed *Adams* due date, which in many instances was not the case, OCR's overall complaint compliance rates as reported to the *Adams* court would have been changed little, if at all, and this is because those missed timeframes could likely have been offset by the use of the 20 percent exception which is permitted by the order. Thus by contrast to the impression conveyed by most of the press reports, the matter has been handled swiftly, effectively, and efficiently to ensure that the problem does not recur.

Mr. Chairman, to read the news stories around the country, you would gather the erroneous impression that all OCR employees took part in the case processing irregularities, and nothing could be further from the truth.

I believe that with few exceptions, the OCR staff, the career staff, are honest, decent, law abiding, dedicated, hard working and committed career civil servants.

One more point—the union which represents OCR employees, is on record requesting that OCR management lessen the strict deadlines all OCR employees have to adhere to in their performance plans because they contend these timeframes are too strict and impossible to meet.

We have responded to the union indicating that the timeframes are dictated by the court and are not within OCR's prerogative to adjust.

I would like to emphatically state that under no conditions as long as I hold this position or another position of responsibility in the Office for Civil Rights, will I permit any wrongdoing with respect to the handling of documents pertaining to safeguarding the civil rights of the American people. I am a new American, having arrived in this country in early 1964, and I pride myself in protecting the rights which I consider sacred and which other countries do not provide to their citizens. I believe it is my duty to protect those rights, and I believe I have done just that and will continue to do it, and my record speaks for itself.

On higher education desegregation, to bring you up to date on the issue of higher education desegregation, first I want to note that the subcommittee should be aware that Secretary Bennett has called each of the Governors of the States with expired desegregation plans to seek their active involvement in reviewing the factual findings prepared by OCR.

We mailed proposed factual reports to the Governors on March 27 of this year. We have asked for their comments as well as public comments within 60 days. In accord with OCR's past practices, Department officials will meet with these Governors or their staffs to discuss these reports and their higher education desegregation activities generally. We hope the advice from the Governors will, first of all, help ensure that our reports are accurate, and secondly, help us in our continuing efforts to make higher education equally available to all.

The subcommittee has been provided with copies of the proposed factual reports, and I would like to briefly describe the process OCR used to produce these reports.

Five plans expired in December 1985, and five more on June 30, 1986. The first five were Arkansas, Florida, North Carolina—only the community colleges—Oklahoma and Georgia. The second five were Virginia, West Virginia, South Carolina, Missouri, and Delaware.

As the plans were expiring, OCR's regional offices received reports from the States themselves as we have done in previous years. Regional office staff visited all 254 institutions covered by desegregation plans and prepared reports based upon those visits.

The regional offices also prepared a report on each State, summarizing the plan commitments and the State's activities over the life of the plan.

In addition, statistical data from OCR surveys was collected. All this material was submitted to OCR in Washington and then we went to work.

Faced with thousands of pages of material, a task force was organized to compile the basic information into usable form. Task force members worked full time on this project for several months during the summer of 1986. Further review and consolidation, including extensive fact checking performed by another group, resulted in final preparation of the draft reports we have now sent out for comment. Both efforts were given the same basic instructions—prepare a complete, objective, factual summary of the activities of each State under a higher education desegregation plan.

In March 1987, final checking of facts and proofreading was completed, and we decided, however, that rather than come to a conclusion ex cathedra, we would provide a final formal opportunity for Governors and the public to comment. The 10 reports total over 570 pages, and that is not including the statistical tables. The amount of information and the importance of the decisions that will be made suggested strongly that we should get comments to ensure we have a proper factual basis for our decisions, and that all relevant considerations are brought to our attention.

At the conclusion of the comment period, we will be making decisions about whether and to what extent each State and institution is in compliance with title VI of the Civil Rights Act of 1964.

We will be happy to consider your comments if you would care to make any. If any Member would like copies of the reports, we will be glad to provide them to you.

Mr. Chairman, once again, it is my belief that the case mismanagement problems have been addressed vigorously and thoroughly. I want to reassure the subcommittee that one of the first things we looked at after having discovered the problem was whether the inappropriate case handling practices had any effect on the substantive civil rights issues in the complaints and, as far as we can tell, these irregularities did not adversely affect any individual's civil rights nor OCR's overall compliance with the court-ordered timeframes.

This is not meant to minimize in any way the importance of complying with the letter of the court's order. The dating discrepancies go to the integrity of the case processing system. The tolling problems unnecessarily delayed the adjudication of rights. Both types of practices are to be condemned. We are now vigilant to prevent any case processing irregularities in the future.

Mr. Chairman, I want to reiterate our continuing commitment to enforcement of title VI in higher education. OCR will not permit by action or inaction discrimination in any educational activity under its jurisdiction, whether in those States that formerly operated de jure segregated higher education systems, or elsewhere. I take our responsibilities in this area very seriously.

We have, so far at least, avoided a rush to judgment on these very important decisions. Soon we will have completed a long and detailed evaluation process. I think the outcome will be a carefully reasoned and effective approach to title VI enforcement in the future, ensuring equal educational opportunity in higher education.

Finally, I believe it is relevant to bring to your attention some examples of the kinds of action I have taken in the past 17 months to ensure the rigorous enforcement of civil rights.

Since January 1986 when I was appointed Acting Assistant Secretary, I have authorized the issuance of 12 notices of opportunity for a hearing. Twenty-five letters of findings have been issued where violations have been found; 768 letters of findings have been issued where violations were corrected.

We are enforcing civil rights in the Office for Civil Rights.

Mr. Chairman, thank you for your attention. I will be happy to answer any questions you might have.

[The prepared statement of Ms. Coro follows:]

TESTIMONY

OF

ALICIA CORO
ACTING ASSISTANT SECRETARY
FOR CIVIL RIGHTS
U.S. DEPARTMENT OF EDUCATION

TO THE

SUBCOMMITTEE ON HUMAN RESOURCES
AND INTERGOVERNMENTAL RELATIONS
2154 Rayburn House Office Building
April 23, 1987
9:30 a.m.

Mr. Chairman and Members of the Subcommittee.

Thank you for the opportunity to testify about the efforts of the Office for Civil Rights to address two of the major issues presently facing the Office. Those issues are irregularities in the processing of cases by certain of the Regional Office staff, and higher education desegregation. With the Chairman's permission, I would like to read a brief statement before taking your questions. I believe some basic information on these issues will help clarify matters for the Subcommittee.

As you are no doubt aware, for the past 9 months OCR has investigated and effectively dealt with the discovery of certain case processing irregularities in 6 of OCR's 10 regional offices. I am providing you with a full accounting of the entire matter. However, before I get into the details of how I first learned of and subsequently dealt with the misconduct, I will briefly describe for you the framework within which the problem arose.

Since 1977, OCR has been operating under what is referred to as the Adams Order. The Order sets forth time frames for the processing of OCR complaints and compliance reviews. The Adams Order, which has been modified by the court several times since its inception, provides OCR with 15 days to either acknowledge the receipt of a complete complaint or notify a complainant in writing if a complaint is not complete. The Order requires OCR to investigate a complaint and to issue a Letter of Findings -- or LOF -- within 105 days from the receipt of the complete complaint. If a violation of one of the civil rights laws is found, the Order requires that OCR negotiate and secure corrective action within 195 days from the receipt of the complete complaint. If corrective action -- or voluntary compliance -- is not secured within the allotted time, then the Order requires OCR to initiate formal enforcement action within 225 days from the receipt of the complete complaint.

In addition, the Adams Order also permits OCR to "toll" -- or interrupt -- case processing of complaints and compliance reviews in certain defined circumstances.

The Adams Order permits exceptions to the time frames for up to 20 percent of the complaints and compliance reviews processed nationwide in a fiscal year -- but no more than 30 percent of these exceptions can occur under any one statute's jurisdiction (for example, Section 504) or in any one regional office.

You should also be aware that the performance agreements of all OCR regional program managers contain performance standards requiring that "100 percent of the Adams due dates" be met, while permitting that the exception be employed for "no more than 20 percent of the due dates." The success of their performance in meeting these deadlines is one of the factors that determines their pay.

As a final background note, OCR collects and stores information on its complaint and compliance review activities in what is known as the Automated Case Information Management System or ACIMS. ACIMS is a fully automated on-line computer system that tracks the occurrence of critical events -- such as Adams time frames -- and provides accurate and timely case information to staff in OCR's regional offices and headquarters.

With this background, I will now discuss the various circumstances surrounding the inappropriate case processing practices.

To read certain newspaper accounts, you would think that the problem was discovered only yesterday. I think it is very important for the Subcommittee to understand that I discovered this problem, during a visit to the Boston regional office on Tuesday, July 15, 1986. At that time, I was given reports of unethical and unprofessional activities with regard to efforts to meet the Adams time frames. Specifically, I was informed that certain regional officials in Boston had directed subordinate employees to "backdate" Letters of Findings, or LOFs, so that those documents were recorded as if they had "met" the relevant Adams time frames. In addition, I was advised of problems with regard to the inappropriate extension of certain "tolled" cases.

At the outset, I immediately reported the matter to the Secretary and to the General Counsel. At the order of the Secretary, the files in Boston were secured and taken into the custody of the Inspector General's office, over the weekend following that Tuesday. Within three days, I sent a team of OCR senior staff to Boston to investigate fully the situation in that regional office. I believe it is significant that this OCR investigation commenced immediately and was triggered by my reports to Department officials. I reported the results of the OCR team's findings -- which were based on detailed inspections of targeted case files -- to the Secretary on August 20, 1986. A summary of the results of this investigation was also reported to the Adams Court and plaintiffs in September, and to the Adams plaintiffs again in October.

The OCR team found evidence to suggest that the Boston regional office sometimes had used improper procedures with regard to certain requirements of the Adams Order. Specifically, in 15 (out of 26) cases, the dates reflected in the sign-off logs were from one to six days after the date stamped on the official file copy of the LOF. This indicates that the actual issuance date was after the Adams deadline.

In October, in OCR's Semiannual Report to the Adams plaintiffs, we again disclosed the possibility of problems in the regional offices, as well as in Boston.

Shortly after the special Boston investigation was completed, I sent three other teams of OCR senior staff to the remaining 9 regional offices to determine whether there were similar occurrences in any of those offices. I reported the results of this region-by-region investigation to the Secretary in December 1986, after a detailed report had been prepared for me by the team leader who oversaw the nationwide investigation.

Dating discrepancies were found in 5 of the remaining 9 regional offices -- in Atlanta, Dallas, Kansas City, San Francisco, and Seattle. For example, the date reflected in a sign-off log would be one or two days after the date stamped on the file copy of the LOF (the Adams due date).

In 5 of the 9 regional offices -- Philadelphia, Atlanta, Dallas, San Francisco, and Seattle -- cases were found to be routinely tolled (or interrupted) without an adequate basis. Some regions inappropriately invoked certain tolling provisions and some continued the tolls well beyond the time that they should have, whether or not the toll had been appropriately initiated in the first place.

In March 1987, another report was filed with the Adams Court, advising Judge Pratt of the results of the nationwide investigation and of the various actions I have instructed the agency to take to cure the problems discovered.

Since July 1986, when these problems were first brought to my attention, I have implemented a number of policy -- as well as personnel -- changes to ensure that nothing like this ever happens again.

A plan has been developed for frequent audits of regional case files and records to assess the validity of data entered into ACIMS regarding dates relevant to compliance with the Adams Order and the tolling of Adams time frames. To ensure that the objectives of these reviews -- which are to be conducted without advance warning -- are not defeated, I request that you not ask me to discuss further details about these upcoming audits.

I have also added a special performance objective to all of the Regional Directors' performance agreements, which is designed to eliminate recurrence of the objectionable practices and to place personal responsibility upon each Regional Director for monitoring regional performance. This includes the requirement that the Regional Directors have direct personal knowledge of the *Adams* due dates and can document the actual transmittal dates of all acknowledgment letters and Letters of Findings.

In addition, the Regional Directors have developed, at my direction, regional monitoring systems to ensure that time-sensitive documents are dated accurately and that cases on toll status are reviewed periodically. These systems have been reviewed by OCR headquarters and uniform case management processing systems have been developed.

OCR has also prepared detailed written guidance for the regions regarding the implementation of the *Adams* Order -- particularly in the areas of issuance of Letters of Findings and tolling of time frames -- to avoid the possibility of any future misinterpretations of the requirements of the Order.

I have also taken other preventive action to avoid recurrence of *Adams* time frame irregularities. For example, OCR is conducting a study of regional case processing procedures to identify opportunities for simplification. The agency is also reviewing current regional reporting and other administrative requirements to ascertain whether their elimination or modification would enable regional staff, including Regional Directors, to devote a higher percentage of time to case management activities.

I direct your attention to the following illustration of the effectiveness of these corrective measures: while, on February 26, 1986, there were 258 cases nationwide in a "tolled" status, exactly one year later there were only 74. This represents a significant -- 71 percent -- decline in the number of cases being placed on hold.

With regard to disciplinary action, I have admonished current Regional Directors who were in that capacity when improper case management practices occurred in their regions. In addition, in Boston, where the most pervasive mismanagement occurred, four of the five top managers in that office have been replaced. I fired one. One retired (shortly before I discovered the irregularities); one was transferred to headquarters and subsequently resigned; and one was removed and reassigned to another position.

Finally, even if all of the cases identified as having some irregularity indeed resulted in a missed Adams due date -- which in many instances was not the case -- OCR's overall complaint compliance rates, as reported to the Adams court, would have been changed little, if at all. This is because those missed time frames could likely have been offset by the use of the "20 percent exception" which, as I explained earlier, is permitted by the Adams Order.

Thus, by contrast to the impression conveyed by most of the press reports, the matter has been handled swiftly, effectively and efficiently so as to ensure that the problem does not recur. Furthermore, while news stories around the country conveyed the erroneous impression that all OCR employees took part in the case processing irregularities, nothing could be further from the truth. With few exceptions, the OCR staff are honest, decent, law abiding, dedicated, hardworking and committed civil servants. In addition, I would like to note that the Union, which represents OCR employees, is on record requesting that OCR management lessen the strict deadlines all OCR employees have to adhere to in their performance plans. We, of course, responded to the Union indicating that the time frames are dictated by the Court, and are not within OCR's prerogative to readjust.

(HIGHER ED. DESEG.)

To bring you up to date on the issue of higher education desegregation, the Subcommittee should be aware that Secretary Bennett called each of the Governors of the states with expired desegregation plans to seek their active involvement in reviewing the factual findings prepared by OCR. As you know, we mailed proposed factual reports to the Governors on March 27 of this year. We have asked for their comments, as well as public comments, within sixty days. In accord with OCR's past practices, Department officials will meet with these Governors or their staffs to discuss these reports and their higher education desegregation activities generally. Naturally, we hope the advice from the Governors will, first of all, help ensure our reports are accurate and, secondly, help us in our continuing efforts to make higher education equally available to all.

The Subcommittee has been provided with copies of the proposed factual reports. I would like to briefly describe the process OCR used to produce them. Five plans expired in December 1985, and five more on June 30, 1986. The first five were Arkansas, Florida, North Carolina (the Community Colleges only), Oklahoma, and Georgia. The second five were Virginia, West Virginia, South Carolina, Missouri, and Delaware. As the plans were expiring, OCR's regional offices received reports from the states themselves, as we have done in previous years. Regional office staff visited all 254 institutions covered by desegregation plans and prepared reports based upon those visits. The regional offices also prepared a report on each state, summarizing the plan commitments and the state's activities over the life of the plan. In addition, statistical data from OCR surveys was collected. All this material was submitted to OCR in Washington.

Faced with thousands of pages of material, a task force was organized to compile the basic information into useable form. Task force members worked fulltime on this project for several months during the summer of 1986. Further review and consolidation, including extensive fact-checking, performed by another group resulted in final preparation of the draft reports we have now sent out for comment. Both efforts were given the same basic instructions: prepare a complete objective factual summary of the activities of each state under a higher education desegregation plan. In March 1987, final checking of facts and proofreading was completed. We decided, however, that, rather than come to a conclusion ex cathedra, we would provide a final formal opportunity for Governors and the public to comment. The ten reports total over 570 pages, not including statistical tables. The amount of information and the importance of the decisions that will be made suggested strongly that we should get comments to ensure we have a proper factual basis for our decisions and that all relevant considerations are brought to our attention.

At the conclusion of the comment period, we will be making decisions about whether, and to what extent, each state and institution is in compliance with Title VI of the Civil Rights Act of 1964.

We will be happy to consider your comments, if you would care to make any. If any Member would like copies of the reports, we will be glad to provide them to you.

Mr. Chairman, it is my belief that the case mismanagement problems have been addressed vigorously and thoroughly. I want to reassure the Subcommittee that one of the first things we looked at, after having discovered the problem, was whether the inappropriate case handling practices had any effect on the substantive civil rights issues in the complaints. As far as we can tell, these irregularities did not adversely affect any individual's civil rights, or OCR's overall compliance with the court-ordered time frames. This is not meant to minimize, in any way, the importance of complying with the letter of the court's order. The dating discrepancies go to the integrity of the case processing system. The tolling problems unnecessarily delayed the adjudication of rights. Both types of practices are to be condemned. We will be vigilant in our efforts to prevent dating discrepancies or any other case processing irregularities in the future.

Finally, I want to reiterate our continuing commitment to enforcement of Title VI in higher education. OCR will not permit, by action or inaction, discrimination in any educational activity under its jurisdiction -- whether in those states that formerly operated de jure segregated higher education systems or elsewhere. We take our responsibilities in this area very seriously. We have, so far at least, avoided a rush to judgment on these very important decisions. Soon, we will have completed a long and detailed evaluation process. I think the outcome will be a carefully reasoned and effective approach to Title VI enforcement in the future, ensuring equal educational opportunity in higher education.

Mr. Chairman, thank you for your attention. I will be happy to answer any questions you might have.

Mr. WEISS. Thank you very much, Ms. Coro. You testified that you personally discovered the backdating problem during a visit to the region I office on July 15, 1986. Is that correct?

Ms. CORO. That is correct, sir.

Mr. WEISS. According to the inspector general's investigative report on backdating in region I, the inspector general first learned of the backdating on June 17, 1986, and began questioning region I staff on July 14, the day before you claim that you had discovered the backdating problem by yourself.

Now which is correct, your testimony or the inspector general's investigative report?

Ms. CORO. Well, both I assume are correct because the inspector general never informed me that he had discovered this problem through a hot line complaint. I read the same paragraph that you are reading, but he never informed me. The regional staff who had been interviewed the day before were told not to tell anyone, including their supervisors, that they were being interviewed. I did not know anything until I arrived in Boston on July 15 that there had been backdating in that office. The inspector general never informed me about the investigation.

Mr. WEISS. Now was there an acting regional director in region I at that time?

Ms. CORO. She had been the acting regional director for I think about 10 days.

Mr. WEISS. Loa Bliss, right?

Ms. CORO. That is correct.

Mr. WEISS. Isn't it true that she informed you that the inspector general had begun an investigation?

Ms. CORO. She informed me around 12 noon of that same day, July 15. She had not informed me before that the inspector general knew about backdating.

As a matter of fact, at that time, that's when I learned of the backdating problem, I then immediately notified the general counsel and the Chief of Staff of the Secretary.

Mr. WEISS. Did you cooperate with the inspector general's investigation?

Ms. CORO. The inspector general never approached me.

Mr. WEISS. Didn't you on July 16, 1986, inform the inspector general that you would not provide documents to his office?

Ms. CORO. That was an incident that lasted for about 15 minutes. I, of course, was very upset about what I had discovered the day before, and I didn't know that this was going on. I am a human being and was naturally upset. I was upset because of the way in which the inspector general's office asked for information. It was a lower-level staff person, who was informed that I would have to consult with the general counsel. When I spoke with the general counsel, he said yes, just go ahead. I spoke with the inspector general to discuss the matter. The issue was resolved to the extent that that very same evening we were making plans, the inspector general and myself, on the logistics of the inspector general in taking over the files. That is an incident that unfortunately the inspector general chose to put in that report.

The fact is that the inspector general had received this notice on June 16, and I think you are going to have to ask him. I don't know why they didn't start investigating until July 16. A month elapsed before anything happened with regard to an investigation. However, I think that's a question for the inspector general. I cannot answer that question.

Mr. **Weiss**. So that your answer then is that initially you did not cooperate with the inspector general's investigation, is that correct?

Ms. **Coro**. No. I didn't say that. I said I was upset. I questioned the person who was asking me for the documents because as I said, it was a lower level person. I just didn't know how to respond at that particular time. When I became informed, immediately I cooperated.

Mr. **Weiss**. Now that, that refusal, that 15 minutes took place——

Ms. **Coro**. The point that I am trying to make, it was not the inspector general who asked me. It was lower level staff. I just didn't know the background of that request at that time because I didn't know that the——

Mr. **Weiss**. What do you mean lower level staff? You mean it was not the inspector general personally? It was somebody on the staff of the inspector general, and you said that you would not——

Ms. **Coro**. I had no background at that particular point. I had no knowledge that the inspector general had received a hot line complaint. I found out about it when I read that report.

I think you should ask the inspector general why he didn't do anything for a whole month.

Mr. **Weiss**. Well, I think that you will be satisfied with the thoroughness of the inquiry that this subcommittee will undertake.

Ms. **Coro**. A whole month had elapsed and nothing had ever happened for a whole month until I was the one who informed the general counsel and the Secretary. I want that in the record as well.

Mr. **Weiss**. It is in the record. On July 15 when you discovered on the basis of your personal visit, did anybody tell you at that time that the inspector general was undertaking an investigation, was interviewing people?

Ms. **Coro**. Loa Bliss told me around noon of that day, and that is when I learned. I did not have any prior knowledge.

Mr. **Weiss**. That was on the 15th?

Ms. **Coro**. That was on the 15th.

Mr. **Weiss**. It was on the day after, on the 16th, that you were asked by the——

Ms. **Coro**. She didn't know what was going on. She just said that the inspector general was asking questions. We didn't know the nature of the questioning.

A lot of things had been happening in that office. There had been break-ins in the office, so she was not told exactly the reason of the inquiry.

Mr. **Weiss**. She identified herself as being on the staff of the inspector general, did she not?

Ms. **Coro**. She did what?

Mr. **Weiss**. The staff person, was it a she or a he, of the inspector general who you spoke with during the 15 minutes?

Ms. **Coro**. I don't remember. I don't really remember who. I thought we were talking about what happened when I went to the office on July 15. I want to make sure that that is understood, because I can recall that day very, very well, Mr. Chairman, so I would like to go over that day. At around noontime——

Mr. Weiss. Let's start before that day. How did you happen to go to the Boston regional office?

Ms. Coro. There had been performance problems with that office for quite some time and I was concerned. The region was under a performance improvement plan of some sort. I had had discussions with the regional director on the performance overall. There were numerous labor/management issues there, complaints and grievances and so forth, so I was concerned.

The regional director retired on either June 30 or July 3, whatever date it was, and I made Ms. Bliss the acting regional director. I then said I would come for a visit to go over the issues. Ms. Bliss had to take over an office and I gave her about a week or so, and then I went. She prepared some information for me prior to my going there. I took the morning plane and I arrived there. Ms. Bliss picked me up at the airport. We went to the office. I met with the senior staff and then the general staff. Around noon Ms. Bliss informed me of the backdating problem. Ms. Bliss told me that she had been approached by the inspector general. She did not know what the issues were at that time. She had only been approached the day before.

Mr. Weiss. Now on that day before, she was in fact requested to furnish the Office of the Inspector General specific information and the departmental documents relative to the investigation, isn't that correct?

Ms. Coro. I don't know.

Mr. Weiss. She told you about noon on July 15——

Ms. Coro. My recollection, Mr. Chairman, is that she actually did not know what the inspector general was looking for at that time. We had had break-ins. We had had a lot of problems in that office. One of the issues was the backdating.

Mr. Weiss. Ms. Coro, let me read to you then from the inspector general's report. "On July 14, 1986 [Loa] BLISS was requested to furnish the Office of Inspector General (OIG) specific information and Departmental documents relative to the investigation."

Now did she on July 15, when you had the conversation with her at noon, tell you that she had in fact been requested to provide that specific information and departmental documents?

Ms. Coro. I assume she did.

Mr. Weiss. You have no personal recollection of it?

Ms. Coro. I have no personal recollection of the exact conversation. My concern was the mishandling of documents and the tolling of cases and my responsibility with regard to these documents. That was my primary concern at that time.

Mr. Weiss. Now how then within the context of that conversation did you then discover that there was backdating going on?

Ms. Coro. Because she told me. She explained to me what she had seen during the previous months.

Mr. Weiss. She didn't tell you that this is what the inspector general was talking to her about?

Ms. Coro. She said that was one of the questions, but they had other things.

Mr. Weiss. All right, so that in fact, Ms. Coro, it is not you who discovered what was going on?

Ms. Coro. I did. I didn't know anything.

Mr. Weiss. The acting regional director told you that the inspector general had been in the day before talking about backdating? That is what you discovered, right?

Ms. Coro. I want to make this clear for the record.

Mr. Weiss. Yes. Right. Make it clear for the record.

Ms. Coro. My point is that at that time I learned about the backdating from the acting regional director. She told me at that time her concerns about the mishandling of documents, and that's how I learned, and that's the fact.

Mr. Weiss. And you never made the connection between that and the inspector general's presence on the premises?

Ms. Coro. As I said, there were other problems in that office. I am not told by the inspector general what they do. I think this is something for the inspector general to answer.

We receive sometimes referrals of hot line complaints of misuse of phones, time and attendance, and so forth. We follow through when we receive these referrals. If he doesn't tell me, then I don't know.

Mr. Weiss. Now you also stated in your direct testimony that you immediately spoke to the Office of the Secretary and the general counsel, and that you sealed the records or some such. What did you do? Tell us what you did.

Ms. Coro. Well, as I said, I informed the general counsel and the Chief of Staff. We then proceeded to act. They informed the Secretary that very same afternoon. I think he was in town, and the Secretary ordered the inspector general to secure the files.

Now I don't recall exactly at what time that happened, and that's something again that you will have to ask the inspector general.

Mr. Weiss. Let me then read to you again from the same report of the inspector general:

> . . . On July 16, 1986 Alicia CORO, Acting Assistant Secretary, OCR stated OCR would not provide certain requested documents unless she was instructed to do so by the Office of General Counsel.

Ms. Coro. Mr. Chairman, excuse me for interrupting. This is a legal matter. I am not an attorney. I would like to have the opinion of the general counsel. I don't know what is going on. I am presiding over this office. I know there have been all kinds of problems going on there. There is mishandling of documents. I have to have some counsel on how to proceed, and that's exactly what I did.

Mr. Weiss. That's all very fine. I just raise all these points in view of your testimony which bore down very heavily on the fact it was you who discovered this.

Ms. Coro. Yes. As far as the Office for Civil Rights, I discovered it. As far as the Office for Civil Rights, nobody had any inkling of what was going on. At least nobody told me.

Mr. Weiss. Oh, but you don't count the inspector general's finding before you——

Ms. **Coro.** I am concerned, Mr. Chairman. I am concerned with the Office for Civil Rights, and that's my responsibility. I cannot speak for the inspector general.

Mr. **Weiss.** Well, we are going to hear testimony later today from a Mr. O'Quinn that he had told a Mr. Ken Mines of the central office staff in June 1986 about backdating in region I.

Do you know who Mr. Mines is in the central office?

Ms. **Coro.** Yes, I know who Mr. Mines is.

Mr. **Weiss.** Do you know who Mr. O'Quinn is?

Ms. **Coro.** Yes. I understand he is the president of the local union chapter in Boston.

Mr. **Weiss.** Now did Mr. Mines inform you about the conversation that he had had with Mr. O'Quinn back in June 1986?

Ms. **Coro.** No, he did not.

Mr. **Weiss.** Now what is Mr. Mines' position at OCR?

Ms. **Coro.** He is the regional director in region V. That's the Chicago regional office.

Mr. **Weiss.** What was he in July 1986?

Ms. **Coro.** Where was he?

Mr. **Weiss.** What was he? What was his position at that time?

Ms. **Coro.** Mr. Mines has served as Acting Deputy Assistant Secretary, so I don't know if in July he was acting in that capacity. I would have to check back through the records.

Mr. **Weiss.** If I told you that in fact at that time he was the Director of Operations, you wouldn't argue with that?

Ms. **Coro.** Right,

Mr. **Weiss.** OK. Now if in fact Mr. O'Quinn had told Mr. Mines, who was then Director of Operations from central office, in June 1986, then it is not factually accurate, although you may have believed it to be so, that you were the first and only person to know about this backdating when you learned about it? Nobody knew about it prior to July 1986?

Ms. **Coro.** Mr. Mines never informed me. If that is the case and if that is true, you have to ask Mr. Mines. Mr. Mines never told me about that conversation.

Mr. **Weiss.** Now were you aware of backdating of civil rights documents to make them appear in compliance with the OCR order prior to July 15, 1986, when you were informed by regional staff, region I staff, of the backdating problem?

Ms. **Coro.** No, I was not, Mr. Chairman. I was not aware of mishandling of documents in any form in the Office for Civil Rights before that date.

Mr. **Weiss.** To your knowledge, did region I staff attempt to cover up or withhold information concerning backdating of documents from you?

Ms. **Coro.** In what context? I assume they were trying to do this. They were in fact, quote, unquote, cheating, and were trying to do this thinking that they were never going to be caught. I don't quite understand the context of your question.

Mr. **Weiss.** Well, do you believe that in fact there was an effort to keep the information from you?

Ms. **Coro.** Of course. I am sure, I believe that that must be a fact.

Mr. **Weiss**. And on July 16, 1986, you received a memorandum from Loa Bliss, did you not, informing you that backdating had occurred in region I?

Ms. **Coro**. No. You see, the memorandum may have been put in the mail, but I did not see the memorandum. I will have to look at the date. I didn't see that memorandum probably until I got to the regional office that morning. I will have to look at the dates.

Mr. **Weiss**. If staff will show the Acting Secretary a copy of this memorandum?

Ms. **Coro**. You are talking about the day before?

Mr. **Weiss**. No. I am talking about July 16. You said——

Ms. **Coro**. The day after.

Mr. **Weiss**. That's the date on it, yes.

Ms. **Coro**. I was there on July 15. That's when I learned.

Mr. **Weiss**. Do you recall receiving a memo from Loa Bliss on July 16.

Ms. **Coro**. Probably. I probably asked for more information. After I left the regional office around 2 or 3 o'clock in the afternoon, I may have asked for more information, and that is probably what it is. It was probably sent by electronic mail to me the next day.

Mr. **Weiss**. You said Loa Bliss had been in the acting regional director position for only about 10 days?

Ms. **Coro**. Or so, whatever it was after Mr. McCann retired.

Mr. **Weiss**. Right. Had she been in the regional office prior to that time?

Ms. **Coro**. Yes. Her position of record is the chief regional attorney.

Mr. **Weiss**. And how long had she held that position prior to July 1986?

Ms. **Coro**. Oh, I would have to check that. I think for approximately a year, but I cannot tell. I will have to provide that information.

[The information follows:]

Loa Bliss was appointed Chief Regional Civil Rights Attorney in the Boston Regional Office on July 21, 1985.

Mr. **Weiss**. Now Loa Bliss told the inspector general that she was aware of backdating as early as July 1985 and may have backdated at least one document herself.

She also said she knew the backdating was wrong. Now did Ms. Bliss inform you or anyone else at central office of the backdating problem prior to your meeting with her on July 15, 1986?

Ms. **Coro**. No. Nobody informed me and, to my knowledge, nobody informed anyone at headquarters.

Mr. **Weiss**. Now is Ms. Bliss still working for OCR?

Ms. **Coro**. Yes, she is. She is still the chief regional attorney.

Mr. **Weiss**. Did Ms. Bliss' predecessor, Richard McCann, who was the regional director, ever tell you or anyone else in the central office that backdating occurred in the region I office?

Ms. **Coro**. No, he did not. Mr. McCann never told me.

Mr. **Weiss**. Then I assume that you are not aware of the fact that both Mr. McCann and Ms. Bliss told the inspector general's office that they had either discussed the backdating with central office

OCR staff or were aware of other people who had discussed backdating with central office staff?

Ms. **Coro**. I read that in the inspector general's report, but that's the first time I heard.

Mr. **Weiss**. Now when did you read the inspector general's report?

Ms. **Coro**. When it was issued to the Under Secretary. The cover letter has a cc to me. That's when I read it.

Mr. **Weiss**. That's the November 12, 1986, date, right?

Ms. **Coro**. Whatever date there is on that report.

Mr. **Weiss**. Now have you had occasion since then to check back with other people to see if their statements that central office was aware of, condoned backdating, were true?

Ms. **Coro**. My immediate staff, certainly I have asked, and nobody has——

Mr. **Weiss**. Nobody has told you that that has happened?

Ms. **Coro**. Nobody had any knowledge of this backdating.

Mr. **Weiss**. Had you circulated a general inquiry?

Ms. **Coro**. I have circulated many documents since all that happened, and the memorandums that I have circulated had to do with the proper procedures to handling of investigations of complaints and conducting compliance reviews, and as a matter of fact, I issued a memorandum to all OCR staff about how important it is to date documents, and this memorandum was for all the staff, including clerical staff, so my concern was to make sure that everybody understood the importance of dating documents. You know, in other Federal offices dates may not be that important, and people on a Friday afternoon may not worry that much about what date they are going to put on a particular letter.

In our office, it is very important because of the court order, and I wanted to make sure that all the staff are aware of the importance of dating, so I have issued a number of memorandums. With regard to the investigation, I have to take the investigation of the inspector general and then work with the Office of Personnel and the Office of the General Counsel in order to investigate who was at fault and what kinds of personnel actions I should take, and that's what I did. I think I acted accordingly to the responsibility that I have.

Mr. **Weiss**. I asked you specifically what steps have you taken to investigate the allegations that central office knew about the backdating?

Ms. **Coro**. I asked the senior staff. Do you want me to ask all the employees, a hundred and some that we have in headquarters?

Mr. **Weiss**. It might have been appropriate it seems to me.

Ms. **Coro**. I asked the senior staff. I figured the senior staff are the ones responsible for their subordinate staff.

Mr. **Weiss**. Was Ken Mines part of that senior staff?

Ms. **Coro**. Yes. I considered the regional directors members of the senior staff.

Mr. **Weiss**. And did you ask him?

Ms. **Coro**. Yes.

Mr. **Weiss**. And he said he never had any knowledge of such?

Now when OCR receives a complaint, it must investigate the complaint to determine if it is valid, right?

Ms. CORO. Right.

Mr. WEISS. If violation of laws are found, OCR must take action voluntarily or through enforcement proceedings to correct the complaint, is that correct?

Ms. CORO. That's correct.

Mr. WEISS. OK. According to the inspector general's report on region I backdating, two OCR staff persons, including Mr. O'Quinn, were ordered to contact complainants and persuade them to withdraw their complaints in order to appear in compliance with the *Adams* timeframes.

Is there any justification for this?

Ms. CORO. Not at all. That practice should be abhorred, and the man who instructed him to do that is no longer in that position. He is gone.

Mr. WEISS. A region I employee told the inspector general that she was ordered to contact two witnesses to persuade them to withdraw complaints involving investigations that had not yet met the *Adams* due date. On both occasions, the complainant withdrew the charges.

In at least one of these cases involving the Connecticut Department of Youth and Children Services, OCR found violations of civil rights law, yet still persuaded the complainant to withdraw the charges.

Has OCR since contacted those two witnesses to correct the illegal action committed by OCR region I staff?

Ms. CORO. We would have to find out what cases that he is talking about. I don't know what the answer is. I will have to check whether they in fact were contacted. I do not believe that they were contacted. I believe that the cases were closed, but I certainly can check and provide the answer to you.

Mr. WEISS. I would appreciate that.

[The information follows:]

The Supervisor who allegedly ordered the OCR employee to contact the complainant to obtain a withdrawal in the case involving the Connecticut Department of Youth and Children's Services has resigned, as has the employee who allegedly received the order.

After I received the Inspector General's report, I requested that a senior OCR Headquarters official look into the matters contained in this report, including this case. He was unable to verify if this alleged incident took place. Further, the withdrawal letter signed by the complainant, who is a public defender, specifically states that the withdrawal was voluntary and that there has been no coercion.

Mr. WEISS. Are you aware of any other instances involving OCR staff contacting the complainants to persuade them to withdraw?

Ms. CORO. No. Under no circumstances will I permit that, sir.

Mr. WEISS. Can you assure us there have been no other cases of OCR staff contacting complainants to persuade them to withdraw charges of discrimination?

Ms. CORO. I have no evidence of that going on in the office.

Mr. WEISS. You can't make such assurance because you don't know whether in fact it may have happened elsewhere in other cases?

Ms. CORO. I have no information that that has ever happened except in this isolated case. That has never been brought to my attention.

Mr. **Weiss**. You didn't know about these cases, either, until they were brought to your attention by the inspector general?

Ms. **Coro**. Fortunately, we know about them now, Mr. Chairman, I think fortunately we know about this now.

Mr. **Weiss**. Does that not give you some pause as to perhaps the number of other regions where the same thing may have been going on?

Ms. **Coro**. Not to my knowledge.

Mr. **Weiss**. You did not have knowledge on this, either, beforehand?

Ms. **Coro**. I cannot speak for the time that I was not in the office, before I took over.

Mr. **Weiss**. Were you informed on July 15, 1986, that a Boston radio station was doing an investigative story alleging mismanagement in region I?

Ms. **Coro**. Yes.

Mr. **Weiss**. What was your initial reaction when you learned about this story?

Ms. **Coro**. Well, I was waiting for the reporter to call me. He called me and he interviewed me.

Mr. **Weiss**. As a matter of fact, wasn't your reaction to warn senior staff of press policies and to state that they would be held accountable for breaches?

Ms. **Coro**. That is a standing policy in the office, and I believe that is a standing policy in all Federal agencies.

The Secretary is entitled to have his or her own spokesperson. If you have staff talking to the press constantly, they may just misquote policies or just speak their own mind, on behalf of the office, and that is the standing policy in our office. We have a public affairs staff person, and he is the one who handles the press inquiries and all the press inquiries have to be referred to this individual, and I don't think we are unique in that sense.

Mr. **Weiss**. That instance is an incident that is reflected in Loa Bliss' memo dated July 16, 1986.

You don't believe that would have the effect of preventing the public from learning about the problems in the region I office? You don't think they were entitled to know?

Ms. **Coro**. Well, I was very concerned about finding out who was doing this, Mr. Chairman, and the inspector general was conducting an investigation.

Now, it seems to me that we want to make sure that we proceed swiftly and efficiently, and, at this point, people didn't even know what is going on. We were just beginning to find out. An investigation was in process, but again, I say I stand by what I said in terms of the policy. Press inquiries are to be referred to the public affairs individual on my staff and I think that's a standing practice in all Federal agencies.

Mr. **Weiss**. The *Adams* order allows OCR to toll or temporarily waive the timeframes in cases under certain extenuating circumstances, is that correct?

Ms. **Coro**. To toll the cases, yes, that is correct.

Mr. **Weiss**. Now the inspector general's investigation of region I found that cases had remained on the tolled list after there were no longer legitimate reasons to continue tolling the cases.

Have you determined which cases were illegally on the tolled list and have they since had their tolled status revoked?

Ms. **Coro**. Yes, they have. That is my understanding, that all that has been taken care of.

Mr. **Weiss**. On December 5, 1986, you received a report of a nationwide review of OCR regional compliance with the *Adams* timeframes. The report covered all regions except region I which had already been investigated by the inspector general.

What time period did that report cover, do you know?

Ms. **Coro**. You are talking about the management review of the other nine regional offices?

Mr. **Weiss**. Right.

Ms. **Coro**. I had three teams go out. I will have to ask the staff.

Mr. **Weiss**. Was that in August, and how long did that last?

Ms. **Coro**. I think it was during August and it was for a period of about 2 or 3 weeks.

Mr. **Weiss**. What timeframe was covered in that report?

Ms. **Coro**. You mean the cases? They looked at a sample in each regional office. They drew a sample of a performance period covering 1 year.

Mr. **Weiss**. OK. The report submitted to you did not address the issue of persuading complainants to withdraw charges. Why was that problem not examined?

Ms. **Coro**. I don't know. I will have to ask. We trained the OCR teams, and I don't know whether we asked or addressed that point. I will have to ask the staff.

Mr. **Weiss**. The report found improper practices in all but one region. In five of the regions, the report found serious backdating problems. You testified earlier that central office knew of no backdating or improper tolling previously.

Ms. **Coro**. Previously.

Mr. **Weiss**. How can these practices have occurred in virtually every region without you or anyone else in central office knowing about them?

Ms. **Coro**. Well, the backdating was something that we discovered in Boston, and then immediately we went out.

You see, one thing you have to understand is that as we went through the managment review, we learned these practices were the result of very careless management in the regions.

To this day, that's the only explanation I can give. Some of the regional directors had very poor management systems in their immediate offices. You see, a letter goes from an EOS to a supervisor who is a branch chief or a division director. It goes to the regional attorney. That document goes through many different hands, and then it goes to the attorney for signoff and review, so that the package itself is following all these different desks, and what we found out is that the regional directors in some cases did not have a handle on how the processing of these cases was being done, especially in their immediate office, because they are the individuals who sign the letter of findings or the acknowledgment letter, so what is important is for the regional directors to know exactly where the documents are at all these various instances, because the document is going from desk to desk, from hand to hand.

Mr. **Weiss**. But if you had all of these sloppy management practices at so many of these regional offices, what does that say about the management practice of the central office?

Ms. **Coro**. Well, but the case processing takes place in the regions. We do not process cases.

Mr. **Weiss**. Don't you have a supervisory responsibility over what goes on in the regional offices?

Ms. **Coro**. Oh, yes, and you know, they all have performance agreements, and that is part of the problem with regard to meeting those deadlines, that all the performance agreements of the regional directors have very strict deadlines and it goes down the line to the EOS's.

Mr. **Weiss**. I know, but you took great care to say, go on about regional sloppy practices and mismanagement and so on, but wouldn't you think that it is the responsibility of the central office, not necessarily you, to oversee everything that goes on?

Ms. **Coro**. I agree.

Mr. **Weiss**. Is meeting the *Adams* timeframes part of the merit goals for OCR managers?

Ms. **Coro**. Yes, it is. It is a critical element in the performance agreements.

Mr. **Weiss**. Now subcommittee staff tells us they learned in region I that nonsupervisory staff were unable to meet the deadlines and received unsatisfactory job ratings, but the same supervisory staff who gave them the poor ratings backdated documents so that their own ratings would pass performance standards. Now has this occurred in other regions?

Ms. **Coro**. In terms of what?

Mr. **Weiss**. In terms of the nonsupervisory staff being penalized, given poor ratings because they didn't meet the deadline and then the very people who gave the poor ratings backdating the papers so they wouldn't be also penalized.

Ms. **Coro**. The performance plans of subordinates have other elements, so maybe they are being rated in other elements of the performance and not just meeting the timetables.

Mr. **Weiss**. No. These specifically were because in fact they had not met the deadlines.

Mr. **Coro**. Well, I would like to know who they are and then maybe we can follow through and make sure those individuals are——

Mr. **Weiss**. You don't need me to tell you who it was who received poor performance ratings in the region.

Ms. **Coro**. We know who are the poor performers—not me personally, but the senior staff should know who are the poor performers among their subordinate staff.

Mr. **Weiss**. The question is, did that same practice go on in other regions?

Ms. **Coro**. What practice? I'm sorry.

Mr. **Weiss**. The practice of having the nonsupervisory staff who did not meet the *Adams* timetables penalized for not meeting those by the very people who, to avert being penalized themselves, backdated the documents. Has that been going on any place else in any of the other regions?

Ms. **Coro**. Not to my knowledge.

Mr. **Weiss**. Have you checked?

Ms. **Coro**. Checked what? If the EOS, as I said—maybe, it might be helpful if you understand how the performance appraisal system works, Mr. Chairman. The performance plan has different elements, and the subordinate staff may not be meeting timetables, and that is one critical element. They may be doing other things that are not correct. Maybe they are not just being penalized for not meeting the timeframes.

Mr. **Weiss**. Madam Acting Secretary, you are the person at the top. You took great pains to tell us all the things you have done. What I am asking you now is, are you fulfilling your management responsibilities and checking to see if what has been established as having happened in region I may or may not be happening in the other regions?

Ms. **Coro**. I think I have by all the actions that I have taken.

Mr. **Weiss**. I ask you again then, do you know whether in fact that has happened in any of the other regions?

Ms. **Coro**. I do not think——

Mr. **Weiss**. You don't know?

Ms. **Coro**. I don't think it is happening in other regions.

Mr. **Weiss**. But you don't know. You don't know. OK.

Ms. **Coro**. I cannot say that I am 100 percent sure, but you know, Mr. Chairman, I think we have to look at Boston as an isolated case in the fact that the division directors were instructing, the supervisors were instructing employees to backdate.

Mr. **Weiss**. Isn't there exactly this kind of investigation going on in region IX right now, exactly the same kind of situation?

Ms. **Coro**. No. That is not, that is not my understanding, but I don't think I should comment. Again, the inspector general is conducting that investigation, so maybe you should ask him or wait for his investigation to be completed.

Mr. **Weiss**. Now you told us all the things that you had done in relation to the people in region I in the Boston office who were found to have been guilty of these violations.

Ms. **Coro**. Yes.

Mr. **Weiss**. Now what, if any, disciplinary action has been taken or is being taken with regard to people who violated the same order in the same way in other regions?

Ms. **Coro**. I have admonished the regional directors, I want to make sure that it is clear that I have no evidence that regional directors in other regions themselves backdated documents or instructed their subordinate staff to backdate documents. I have no evidence to that effect.

I had evidence in the regional office in Boston, but not the other regional offices.

Mr. **Weiss**. We already have information that has been supplied for the record today indicating the number of cases that have been checked by the inspector general and by your staff.

Ms. **Coro**. Right.

Mr. **Weiss**. In region after region, x number of cases were checked, and three-quarters of them or one-half of them or two-thirds of them or one-third of them have in fact been backdated.

Ms. **Coro**. You know, you keep——

Mr. **Weiss**. That is your staff's findings.

Ms. Coro. You keep using the word "backdated" and I have to use dating discrepancies. Let me say this. You are making it sound like all OCR employees are engaged in backdating. If I were one of those OCR employees, career civil servants—some of them have been with the office for 18 years and have an unblemished record—I would certainly be writing a letter to you because you are implying that all of OCR employees are engaged in backdating, and that is not the truth, Mr. Chairman.

Mr. Weiss. Madam Acting Secretary, nobody has suggested that all or most of the employees are doing it, but here we are in a December 15, 1986, memo from Edwin A. Stutman. Who is Mr. Stutman?

Ms. Coro. He was my attorney adviser. He has now moved to the Department of Justice.

Mr. Weiss. His finding in that report is that of 32 cases examined in region IV, 14 were backdated; in region VI, of 26 cases, 18; in region VII, of 36 cases, 17; in region IX, of 20 cases, 7; and in region X, of 20 cases, 7.

Do you consider that to be unsubstantial, your own person telling you this?

Ms. Coro. I think that is a practice that should be condemned, and I have done so, and I informed the court about that, but——

Mr. Weiss. What else are you doing?

Ms. Coro. You want me to fire all the regional directors, fire all the division directors, fire all the—I preside over an office that has 840 employees. You want me to say that all of them were engaged in this, and I say no, Mr. Chairman, they were not.

Mr. Weiss. Ms. Coro, don't throw red herrings. I didn't say all. You know as a Federal employee that in fact it is a crime to falsify records by way of backdating, do you not? You know it is a crime to backdate——

Ms. Coro. Yes, I know. We are under a court order. Of course we know.

Mr. Weiss. OK. Therefore, the people who did that committed crimes.

Ms. Coro. Who did it, Mr. Chairman? Who did it? That's the point. That's the question that nobody can tell me, and the inspector general didn't tell me that, either, who did actually backdate a certain document?

What we found is evidence of dating discrepancies, but there is no finger pointing as we had in Boston. We had the finger pointing in Boston. I say here that we did not, that I do not have the finger pointing in the regional offices.

Mr. Weiss. You have not been able to in interviews with the regional manager——

Ms. Coro. No, I have not. I do not have the evidence of who in actuality did the backdating on the documents. I don't have that evidence in the other regional offices or evidence that the regional directors were instructing their subordinate staff to backdate, which was the case in Boston.

Mr. Weiss. Has the matter been referred to the Justice Department for investigation?

Ms. Coro. Yes, we certainly did. We went, we filed the briefs with the court. The Department of Justice knows about this.

Mr. **Weiss**. No, no.

Ms. **Coro**. There has never been any attempt to cover up. You make it sound like I am covering up a big conspiracy, like all OCR employees are engaging in all these practices, and that is not the truth, Mr. Chairman, and I want to make that very, very clear.

Mr. **Weiss**. Ms. Coro, you are very good at challenging allegations that nobody has made. Now I would like you to respond to questions that we ask you.

Have you in fact officially referred the matter to the Justice Department?

Ms. **Coro**. Let me—I assume the answer is yes, but let me ask the legal staff if the answer is yes.

Mr. **Weiss**. Would you please identify yourself? The gentleman who is whispering into the Acting Secretary's ear, would you please identify yourself?

Ms. **Coro**. Come over here.

Mr. **Kiko**. I am Philip Kiko.

Mr. **Weiss**. Spell the last name for the record.

Mr. **Kiko**. K-i-k-o.

Mr. **Weiss**. What is your position?

Mr. **Kiko**. Acting Director, Policy and Enforcement.

Mr. **Weiss**. Would you please stand and raise your right hand?

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Mr. **Kiko**. Yes, sir.

Ms. **Coro**. Would you please repeat the question, Mr. Chairman?

Mr. **Weiss**. Has the matter regarding the other regions and the backdating been officially referred to the Department of Justice?

Mr. **Kiko**. I don't believe it has been officially referred to the Justice Department for enforcement. They do have the material. It is supplied. They did file the report with the court.

Mr. **Weiss**. Say it again.

Mr. **Kiko**. They did file the report with the court on behalf of the Office for Civil Rights.

Mr. **Weiss**. I notice that we have about 5 minutes before we will have to leave for a vote. Mr. Konnyu, do you have any questions?

Mr. **Konnyu**. Mr. Chairman, I can't help but note that all three of us in this triangle, Ms. Coro, you and I, came to this country—and one of the things that we hold dear in this country is the issue of civil rights because it is obvious if we don't do a good job, it will divide this country as it has in the sixties to an extent that we can't accept.

Let me refer to a couple of things. First of all, in the prior testimony, we noted that a complaint had been filed in the Boston office with respect to the court-ordered deadlines, and that normal practices, normal working hours would not allow the Boston office to meet those court deadlines, and then to relate that to the backdating issue, the backdating issue as I see it has two different impacts.

First of all, it has an impact on the Department's civil rights efforts.

Ms. Coro, in your judgment, did the backdating affect negatively the civil rights efforts of your Department or did it hurt those who complained about the civil rights violations?

Ms. CORO. No, not to our knowledge, because there was never any tampering with the substance of the cases. The tampering was with the dates of the processing of the cases, so the only consequence was the delay in the adjudication of rights, but there was never any tampering with the substance of the cases.

Mr. KONNYU. OK, so if you look at it from the practical, everyday angle, you are establishing the fact that there was no meaningful impact for the few days or 1 day or several days that those documents were backdated?

Ms. CORO. That is correct. I think what we have to look at is that the integrity of the process was the problem.

Mr. KONNYU. All right, so basically in reviewing the inspector general's report as I have, the impact is not on the civil rights efforts, rather it is on the law violations, that you cannot falsify documents, Federal documents?

Ms. CORO. That is correct.

Mr. KONNYU. That's the ballgame. Now in light of that, has your effort directed, I mean to say your personal effort, or your central staff's effort, directed the various outlying regions such as Boston to backdate documents?

Ms. CORO. Never.

Mr. KONNYU. Neither you nor any member of the central staff in a managerial capacity?

Ms. CORO. Not to my knowledge, sir.

Mr. KONNYU. So those were done apparently under a different set of driving circumstances as the inspector general's report establishes?

Ms. CORO. That is correct.

Mr. KONNYU. All right. Mr. Chairman, I guess we should stop at this point and resume when we get back.

Mr. WEISS. Thank you very much, Mr. Konnyu. We will take a break and will resume within 10 to 15 minutes.

[Recess taken.]

Mr. WEISS. The subcommittee is now back in session. Mr. Konnyu.

Mr. KONNYU. Thank you again, Mr. Chairman. Ms. Coro, I would like to ask you what is the current status of OCR's evaluation of the expired higher education desegregation plans?

Ms. CORO. We released the factual reports to the States on March 27. We sent a letter to the Governors, and we have a 60-day comment period.

After that comment period is over, then we expect to make some decisions about whether the States are in compliance with the title VI.

Mr. KONNYU. How much material did OCR have to review in order to prepare the factual reports?

Ms. CORO. Hundreds of thousands of pages; going back 5, 6, 7, 8 years. We have to review all those reports.

Mr. KONNYU. When we talk of States, do we mean, do you mean in reply also to the District of Columbia?

Ms. CORO. No, because that is not one of the States among the 10 States that we have to make a decision on.

Mr. **Konnyu**. Perhaps—I think I saw you in the back of the room when I asked the question of Mr. Chambers of the NAACP Legal Defense Fund.

Are you taking any steps with respect to the segregation of Howard University?

Ms. **Coro**. I don't know if we have conducted a compliance review. We will have to check. The District of Columbia would fall under the region III, which is Philadelphia, so I can find out.

[The information follows:]

Since 1978, Howard University has been the subject of 15 complaints and 1 compliance review. No compliance reviews have been performed on the basis of Title VI. Based on the information contained in your question, we are seriously considering a compliance review.

Mr. **Konnyu**. I would appreciate it if you would do so because obviously the percents I made were only one-half of 1 percent of students were white as opposed to the progress made in Lincoln University at Missouri where 15 percent are white. That kind of progress is positive in Lincoln, and then I am wondering why it is not being so at Howard.

Let me now return to the States. What were your reasons for submitting these reports to the Governors for each State and the public for comment?

Ms. **Coro**. First of all, we wanted to make sure the information that we have is correct. That was the major reason. Also, I think we believed it was important to give opportunity for comment to particular interested parties and also to the public at large.

Mr. **Konnyu**. What do you hope to achieve with that step?

Ms. **Coro**. After we make sure the information is correct and give the States an opportunity to give us additional information, that we do not have, then we will take all that into consideration as well as any other comments that we will hopefully receive. At this point OCR will then make some decisions about each State, and each State is going to have to be looked at separately because they all had different and unique plans.

Mr. **Konnyu**. Now once you have received the public comment, how do you plan to use that information?

Ms. **Coro**. We will consolidate the comments and look at them in some form and analyze those comments.

Mr. **Konnyu**. When did you expect to make the final determinations on these expired State plans?

Ms. **Coro**. I don't want to give a particular date because I don't know, you know.

Mr. **Konnyu**. Well, approximately?

Ms. **Coro**. Probably a few weeks after we close that 60-day comment period, we will be able to do so.

Mr. **Konnyu**. It has been suggested if the States have not met all of the numerical objectives in their plans, that is, increasing black enrollment in white institutions, then the States should be found not in compliance. In essence, this would be considered a quota system.

Have quotas been a part of the higher education desegregation process within your function?

Ms. **Coro**. Well, the plans originally did have numbers which could be construed as quotas.

However, the revised criteria did not include the quotas as a requirement, and the criteria are very specific about that. The criteria were never approved by the court, and it specifically says, and I can even quote from the criteria, that these goals are not quotas. They are Department, and in those days it was the Department of HEW, goals as opposed to arbitrary quotas, and "failure to achieve that goal is not sufficient evidence standing alone to establish a violation of Title VI." So that was what the criteria in those days specified, and that criteria were never changed by the Reagan administration. It is still the same document that was approved in 1978.

Mr. KONNYU. So by, if I can understand this, so by carefully constructing those numbers not as finite quotas but as general goals——

Ms. CORO. Right.

Mr. KONNYU. You are not considering them quotas, is that correct?

Ms. CORO. That's correct, and we will not make a decision based on quotas.

Mr. KONNYU. I understand that you are required by law to seek voluntary compliance with the law before pursuing enforcement action, am I correct?

Ms. CORO. I'm sorry?

Mr. KONNYU. I understand that you are required by law to seek voluntary compliance?

Ms. CORO. Yes, that is correct, sir.

Mr. KONNYU. With the law before pursuing enforcement action?

Ms. CORO. Right.

Mr. KONNYU. Has OCR negotiated with the States over the terms of their desegregation plans, that is, voluntary compliance?

Ms. CORO. My answer would be yes, because all these years we have been working with the States, monitoring the implementation of these plans, assuming that they would be complying voluntarily.

Mr. KONNYU. I want to phrase this carefully. Were you working with those States in an administerial fashion or in an assertive fashion to try to come up with the best possible plan short of obviously going to court?

Ms. CORO. Well, that's my understanding, that plans have been amended many, many times. I mean additions have——

Mr. KONNYU. Would you characterize what—I used the word assertive plan. Would you characterize what you mean when you agreed with the word "assertive"?

Ms. CORO. I don't know if I quite follow you, but see, my understanding is that——

Mr. KONNYU. What are you really doing to make things happen in a positive way?

Ms. CORO. That is what the Federal staff have been doing all these years, working with the States.

Mr. KONNYU. But specify, you know, like the top two or three things that you really think you are doing.

Ms. CORO. There were three parts.

Mr. KONNYU. Things you would think Congressman Weiss and I would get excited about saying these are positive things, you are going to the right direction.

Ms. Coro. I think there are—the States' reports have a number of, many examples of those kinds of things with the kinds of measures that the States implemented in terms of recruiting, for example. They have done a lot in terms of recruiting, going to black high schools. I don't know if I can specify any particular example because there are so many instances and so many measures among all the different State plans.

I think we have to understand that the States were working from these plans, and the Federal staff in working with the States would monitor the implementation of the plans. The States were responsible for coming up with these solutions and they would then discuss with the Federal staff what type of information was to be included or not included. Then we accepted all these initiatives that the States were taking.

Mr. Konnyu. Now finally, if Mr. Chambers of the NAACP Legal Defense Fund were sitting in your management meetings, would he get excited in a positive way about the things that you are trying to do in your function?

Ms. Coro. It is difficult for me to say.

Mr. Konnyu. Well, try.

Ms. Coro. Well, if he wants to work in a constructive way, then maybe either Mr. Chambers or anybody else would, I think, accept that as an opportunity to work together and jointly for the same goal, and I would say that that would be an aspiration we all have.

Mr. Konnyu. I don't quite think you answered it the way that I had hoped you would. Let me perhaps, rephrase it.

If Mr. Chambers were allowed to sit in with you, obviously he is not going to be there, but if he were, knowing what his interests are, do you feel that he would be excited in a positive way about the things that you and your Department leaders are trying to do in accomplishing the goals of your office?

Ms. Coro. I think he would be pleased.

Mr. Konnyu. Why is that so?

Ms. Coro. Because I think there is a genuine effort to make these plans work and to make the States be in compliance and to do away with the discriminatory practices and to ensure that they all have race neutral admissions policies and black students have the same opportunity as white students to go to school and get a good quality education. I think he would find that.

Mr. Konnyu. That's a general statement, and I appreciate that very much.

Are there any specifics you would think he would really appreciate, defined areas that you could label for us?

Ms. Coro. Well, maybe the traditionally black institutions, what we call the TBI's, I think they have been enhanced in different ways, and some of the leaders of the civil rights community have acknowledged that there has been enhancement of TBI's, so there may be one particular area where I think they would be pleased.

Mr. Konnyu. All right. Thank you, Mr. Chairman.

Mr. Weiss. Thank you, Mr. Konnyu—a noble effort. Let me just very briefly see if we can conclude on the backdating issue.

Ms. Coro, the OCR report on backdating in regions identified the cases of backdating. Isn't that correct? They singled out and told you the specific cases in which backdating occurred?

Ms. Coro. That's correct.

Mr. Weiss. Right, and don't the staff who sign off on the dates initial the documents? Aren't their names on the letters of findings and letters of acknowledgment?

Ms. Coro. The various staff, they should have, yes, and the file copy, that was the discrepancy that was found with the file copy, and the actual letter, the date that was on the letter, the issuance of the LOF.

Mr. Weiss. So that in region I, it was easy to determine who did the backdating simply by looking at the signatures on the letters of finding, the letters of acknowledgment, isn't that correct?

Ms. Coro. I don't agree. I think that there was the evidence that the supervisory staff were instructing the employees to backdate, and that was part of the discussion earlier that I had with you, sir.

Mr. Weiss. Now have you examined those particular cases for the initials, the names of people?

Ms. Coro. Yes.

Mr. Weiss. Whose initials are on there?

Ms. Coro. I didn't personally, but the review team did examine those cases, each case, and they were reviewed, and then the regional directors commented on these various cases, and they gave an explanation of what had happened.

Mr. Weiss. Now Mr. Kiko had said that the matters involving regions other than region I had not been referred to the Department of Justice.

Have those cases been referred to the inspector general, the Office of the Inspector General?

Ms. Coro. I understand the inspector general conducted an investigation in three offices, so the inspector general looked at those cases.

Mr. Weiss. No. I am asking about all the cases, all the regions.

Ms. Coro. No. The answer is we have not referred them to the Inspector General's Office because my understanding was that they were looking at these cases. They were in three regional offices in addition to Boston.

Mr. Weiss. Yes, but the report that we had, your staff report, indicates that——

Ms. Coro. I gave the inspector general the report that you have, so he does have those cases, so I guess the answer is yes. I'm sorry.

Mr. Weiss. Have you asked him to undertake an investigation?

Ms. Coro. I just don't know whether I have the authority to ask the inspector general to do that. I referred the cases, I mean the report. He has that report.

Mr. Weiss. Mr. Kiko, do you know? Has the inspector general been asked to investigate?

Mr. Kiko. No, I don't think he has been asked to investigate. He has been referred all the information.

Mr. Weiss. Tell me again what your title is.

Mr. Kiko. Acting Director of Policy and Enforcement.

Mr. Weiss. What is enforcement within your authority in this area?

Mr. Kiko. Basically enforcement of the statutes over which OCR has jurisdiction.

Mr. WEISS. I see. You think that it might be advisable to ask the inspector general to investigate all the regions where your own staff has turned up these backdating instances?

Mr. KIKO. The inspector general has been given all the information. I think he can make the determination as to whether the information warrants an investigation.

Mr. WEISS. OK. Let's see if I can move on to some of the areas that were touched on by Mr. Konnyu.

The subcommittee will take a break at about 2 o'clock for about 30 to 35 minutes to give people a chance to grab a bite, and then we will resume and try to complete our hearing as early in the afternoon as possible.

Ms. Coro, during the 1985-1986 school year, the desegregation plans for 10-State systems of higher education expired. We heard testimony earlier today that each of those States have been found by OCR to be in violation of title VI because they contain the vestiges of the illegal dual systems of higher education.

Does OCR continue to follow the Civil Rights Act requirements that remnants of illegal systems of education constitute illegal discrimination?

Ms. CORO. Yes. Yes.

Mr. WEISS. In determining title VI violations in the higher education systems of the 10 States, what did OCR find to constitute the vestiges of the previously illegal dual system of education?

Ms. CORO. You are talking about the seventies or the midseventies in terms of those decisions by HEW? I don't think I can discuss those decisions at this particular time, Mr. Chairman.

Mr. WEISS. Let me indicate then for the record, so that we can then go on to update it, it is my understanding that in 10 States, OCR identified the following as constituting the illegal vestiges of de jure school system: one, black undergraduate enrollment remained below the statewide average, based on the percentage of black high school graduates; two, blacks were underrepresented in graduate professional school programs; three, the racial composition of the schools may have deterred black enrollment; four, inequities in funding resources in traditionally black institutions; and five, school governing boards did not represent local black populations.

Now, has Congress, to your knowledge, changed Federal civil rights laws in any way that would render these factors as no longer constituting illegal discrimination? We haven't changed any of the laws?

Ms. CORO. No, we have not changed any.

Mr. WEISS. OK. Again, for the record, the States which had higher education desegregation plans expire during the 1985-1986 school year were—you correct me if I am wrong—Arkansas, Delaware, Florida, Georgia, Missouri, North Carolina, Oklahoma, South Carolina, Virginia, and West Virginia?

Ms. CORO. That is correct.

Mr. WEISS. Is that correct?

Ms. CORO. I think so. Yes.

Mr. WEISS. Again for the record, those States were found by OCR to be in violation of title VI of the Civil Rights Act, is that correct?

Ms. CORO. Yes.

Mr. **Weiss**. In each of those States, OCR had found illegal, racially identifiable remnants of segregated school systems, is that correct?

Ms. **Coro**. Vestiges of segregation.

Mr. **Weiss**. Vestiges of segregated higher education systems.

Ms. **Coro**. Of the higher education, yes.

Mr. **Weiss**. Now, on November 15, 1984, the Director for Policy and Enforcement of OCR—was that you, Mr. Kiko?

Mr. **Kiko**. No.

Mr. **Weiss**. Somebody else?

Mr. **Kiko**. Right.

Mr. **Weiss**. The Director at that time wrote a memorandum on higher education desegregation plans which concluded that, "The state systems with which [OCR] has been dealing have not heretofore even approximated what might be considered the elimination of the vestiges of dual systems of education." Are you familiar with that memorandum and that statement?

Ms. **Coro**. I must have seen it at some point.

Mr. **Weiss**. You don't disagree that that strikes a responsive chord? You have heard that statement?

Ms. **Coro**. Well, I must have seen the memorandum.

Mr. **Weiss**. Right. OK. Now the memorandum also states that ceasing all enforcement action in States previously under desegregation plans would portray OCR, "as failing to act in the face of a finding of unremedied discrimination. This is precisely what has kept OCR as a losing party in *Adams*, and should be avoided."

Again, this is a memorandum dated November 15, 1984, written during the course of this administration, prior to your being the Acting Secretary, but clearly during the course of this Presidential administration.

Now what do you think of that advice, that ceasing all enforcement actions would be failing to act in the face of a finding of discrimination that has kept OCR as a losing party?

Ms. **Coro**. That is an opinion of a staff person. I have to look at the facts of the case.

Mr. **Weiss**. What do you think about that, Mr. Kiko, that advice?

Mr. **Kiko**. Well, I think it was an opinion of the staff person rendered 4 years ago. I don't really have a comment on it.

Mr. **Weiss**. Do you know that staff person's name?

Mr. **Kiko**. I am not sure. I don't know.

Mr. **Weiss**. Do you know, Ms. Coro?

Ms. **Coro**. No.

Mr. **Weiss**. It was Frederick Cioffi. Now OCR has been evaluating the progress of the 10 States in dismantling the vestiges of the illegal segregated school systems.

When did the latest evaluation begin?

Ms. **Coro**. Well, we conducted 254 onsite reviews, and I would consider this an evaluation. It actually was a monitoring, so this was a final monitoring step in this whole process.

The onsite visit to the institutions took place in the winter of 1985-1986.

Mr. **Weiss**. Mr. Singleton, who was your predecessor, testified before us in September 1985 that the investigation was ongoing, so it had begun at least by the early fall of 1985.

The 1986 OCR annual report, in a section on desegregation plans in these 10 States says, "An evaluation letter will be sent to the states detailing what, if any, further action is required to ensure that they are in compliance with Title VI."

Now, is it still your intent to issue those evaluation letters?

Ms. CORO. I hope so, sir, yes, after we make those decisions.

Mr. WEISS. And when do you expect that those evaluation letters will be sent out?

Ms. CORO. Well, after the comment period is, has ended, we then will look at all the comments that we have received, and hope that soon we can issue those letters.

Mr. WEISS. Those will be evaluation letters?

Ms. CORO. Right.

Mr. WEISS. That's not the final determinations or findings?

Ms. CORO. I'm sorry. Then I misunderstood your question. It will be a final determination of whether the States are in compliance with title VI.

Mr. WEISS. Prior to this time, there had been, instead of the kind of summary of facts that you spoke about earlier that had been sent out, there had been letters of evaluation. This is the first time that there has been the summary of facts, right?

Ms. CORO. Yes, that is correct. What we hope to send to the States is a final determination of whether the States are in compliance. That will include an evaluation of their plans, hopefully. It will include an evaluation of the entire plan which was in effect for 5 years.

Mr. WEISS. Is there in your view a difference between the summary of facts such as the ones that you have just sent out to the States and the letters of evaluation?

Ms. CORO. I would say yes, because an evaluation will then have a conclusion and will say you are hereby declared out of compliance or in compliance, so there will be a difference.

Mr. WEISS. But again, what I am trying to find out is why at this time you decided to send a summary of facts, a restatement in essence of what the States had told you the factual situation was, rather than your evaluation of those factual situations so that the States would know where they stand before you issue final determination?

Ms. CORO. Because it was important to let the States know what kinds of information we had. We will have to make a determination and evaluate 5 years and sometimes more than 5 years, even so the plans actually cover 5 years, so if you want to be precise—and there are hundreds of thousands of pages in the reports that have to be looked at, and reviewed by the Federal staff. We want to make sure that the information that we have is correct.

Mr. WEISS. Now will you issue them before the 1987-1988 school year begins, the letter of evaluation, final determination of facts?

Ms. CORO. Well, I hope so, sir, but I would hesitate here to say by such and such a date, and then if we don't do it, then you will come back and say you said such and such a date and the date is passed and we didn't do it, so I hope that we can do it soon.

Mr. WEISS. That has been the history of the whole *Adams* case going on before your tenure.

Ms. CORO. I cannot speak to that whole history.

Mr. **Weiss**. You can speak to it for the way things are happening now.

Ms. **Coro**. Yes.

Mr. **Weiss**. Things that are expected to happen, so I am asking you whether in fact you intend to issue them before the 1987-1988 school year begins?

Ms. **Coro**. I hope so.

Mr. **Weiss**. Now as part of OCR's evaluation, has your office conducted onsite reviews of all State-funded schools in each of the 10 States?

Ms. **Coro**. Did we conduct what?

Mr. **Weiss**. Onsite reviews.

Ms. **Coro**. Yes—254 institutions included in the 10 States' plans.

Mr. **Weiss**. Based on the onsite reports, did the OCR regional offices send you a status report in May and June 1986 on the desegregation efforts in each of the 10 States?

Ms. **Coro**. Yes. They sent regional reports.

Mr. **Weiss**. These are the same regional status reports that you provided to the subcommittee, is that correct?

Ms. **Coro**. It should have been part of all the information.

Mr. **Weiss**. At this point, we will enter, without objection, the status reports into the record.

[The status reports are in the subcommittee's files.]

Mr. **Weiss**. Now the status reports show that the States still have the problems OCR found to be illegal in 1969 and 1970. The reports find a disparity between blacks and whites in student college enrollment rates. There is a disparity between black and white student retention rates. There is a drastic shortage of black faculty. Entrance rates to graduate and professional schools for blacks are still too low. Traditionally black institutions still lack resources of traditionally white institutions. There are differences in degree. In some cases, there has been some improvement since 1969, and in some cases, the situation is worse, but these are clearly the findings of the regional status reports.

Do you have any reason to dispute the facts compiled by the OCR regional offices?

Ms. **Coro**. No, Mr. Chairman, and those facts are in the State reports. We have not changed those facts. That information that you cited still appears in the State factual reports.

Mr. **Weiss**. These are the same problems OCR found to be illegal in 1969 and 1970, isn't that correct?

Ms. **Coro**. Well, I don't know if I can answer to the word "illegal" or not. I mean, you know, I am not an attorney.

Mr. **Weiss**. They were illegal vestiges of segregation that carried over?

Ms. **Coro**. You are asking me whether I think the State factual reports contain information that would determine there is some illegal——

Mr. **Weiss**. No, no. I am asking you whether in fact the problems that were highlighted in the status reports that we just spoke about are the same problems that OCR found to be illegal in 1969 and 1970?

Ms. **Coro**. Well, you are asking about the illegality?

Mr. **Weiss**. Right.

Ms. Coro. You want me to say yes or no to the illegality of those problems?

Mr. Weiss. I want to know whether in fact the problems that were highlighted, the problems of illegal——

Ms. Coro. You say at that time, it must have been an illegal situation in 1969 and 1970; 17 years have gone by. I don't know at this time. Maybe another legal decision would determine compliance with title VI.

Mr. Weiss. OK. Your point is well taken. Strike the word "illegal." Are these the same problems OCR found in 1969 and 1970?

Ms. Coro. Well, your question has to do with the State reports or with the information from the regional offices? I am confused.

Mr. Weiss. The information from the regional offices on the basis of their site surveys of all the schools in each of those 10 States.

Ms. Coro. Right.

Mr. Weiss. And the question is—I cited the problems, read you all of them.

Ms. Coro. Fine.

Mr. Weiss. Then I asked you whether you have any reason to disagree with those facts, and you said no.

Ms. Coro. No.

Mr. Weiss. Then I am asking you if those are not basically the same problems that OCR found to be problems in 1969 and 1970?

Ms. Coro. Well, the States have implemented the measures that they said they were going to implement, and based on the reports that we have, they have implemented many measures that they said they were going to implement in the plans. The information is right there.

I still don't quite understand what the question is. There has been no change in the information. If your point is whether there was a change in the information from the regional report to the State report, the answer is no, there has not been any change.

Mr. Weiss. The underlying problem is what I am asking about, the very reason why the *Adams* case was born, the very reason why the criteria were determined, and those criteria were set out to correct certain specific problems, and then we went through those specifics and you said you have no reason to disagree with the fact that those conditions still exist, and I am asking, aren't those conditions basically the same today as they were in 1969 and 1970?

Ms. Coro. I don't know, Mr. Chairman. Seventeen years have elapsed since those conditions were established. The conditions, economic conditions, in each State, in each locality may be different.

I think that's a very broad question for me to answer here, in terms of yes or no. I think we are going to have to look at each State and maybe each institution, very carefully.

Now I was in the back of the room when Mr. Chambers was here, and he made that point very clear. You have to look at each institution and each situation very carefully, and look at that and then make a determination. What I am saying is we have not made a determination whether they are in compliance with title VI.

Mr. Weiss. But as far as the facts are concerned, I want to be sure that I have your answer on the record correctly.

I asked you—I am going to go through it again just to make sure I have your answer correctly. The regional status reports show that the States still have the problems OCR found to be illegal in 1969 and 1970.

Now here is what the facts are. The reports find a disparity between black and white student college enrollment rates. There is a disparity between black and white student retention rates. There is a drastic shortage of black faculty. Entrance rates to graduate and professional schools for blacks are still too low. Traditionally black institutions still lack the resources of traditionally white institutions. There are differences in degree. In some cases, there has been some improvement since 1969. In some cases, the situation is worse, but these are the findings of the regional status reports. Now, I asked you do you have any reason to dispute the facts compiled by the OCR regional office?

Ms. **Coro.** No, and I will say again, Mr. Chairman, those facts are in the reports. We have not changed those facts.

Mr. **Weiss.** OK. I want the record to be clear on exactly what OCR has found in these 10 States.

In Arkansas, OCR's data shows increases in the disparity—that is, a widening of the gap—between black and white student entrance rates at all public colleges and universities between 1978 and 1985. During this same period, black student enrollment at traditionally white institutions declined. Is that correct? Is that, in fact, what the OCR found to be the case in Arkansas?

Ms. **Coro.** If that is what the State report says, then that is a fact. Those are the facts we have.

Mr. **Weiss.** The difference between the proportions of black and white students completing 2-year college programs, again in Arkansas, increased by 13 percent from 1979 to 1985. Isn't that correct?

Ms. **Coro.** Yes.

Mr. **Weiss.** Data for Arkansas show nearly a 20-percent difference in the proportion of black versus white undergraduate students who received bachelor degrees in 1985-1985. This represented an increase of 7½ percent above the difference reported 3 years earlier. Is that correct?

Ms. **Coro.** If that is what the report says, Mr. Chairman. I do not recall every single page of those reports.

Mr. **Weiss.** You have no reason to disagree with it?

Ms. **Coro.** If that is what it says, that is what it says.

Mr. **Weiss.** Right. In terms of hiring, Arkansas increased its numbers of black faculty, but the total number of full-time black nonacademic personnel in State schools increased only one-tenth of 1 percent from 1978 to 1986.

Do you have any reason to disagree with that finding in the regional status report?

Ms. **Coro.** That should be in the State factual report as well. As I say, again we have not changed any information from the regional reports.

Mr. **Weiss.** In the State of Georgia, the regional status report paints a bleak picture for black students. The gap between black and white student enrollments has increased. Black enrollment in graduate programs, meanwhile, has decreased. Are these data correct?

Ms. CORO. Mr. Chairman, those reports speak for themselves. Again, I say I cannot recollect every single page of those reports.

Mr. WEISS. But you do not disagree with the facts as set forth here?

Ms. CORO. The facts should be in the report, in the final report. Those facts should be included. We have not changed anything.

The task force was given the task of organizing all the material they had. They had to review tons of material, and they should have put all that in the report.

Mr. WEISS. Meanwhile, according to the Georgia status report, the State has not lived up to many of the commitments that it agreed to in its desegregation plan. For example, enhancement classes at traditionally black institutions are underfunded, and recruitment commitments have not been fulfilled.

Does OCR believe the States should implement the measures they agreed to in their desegregation plans?

Ms. CORO. Mr. Chairman, let me make one point clear with regard to the task force and the factual reports. There were times when the headquarters staff had to go back to the regional staff and doublecheck some of the information that was in those regional reports, so again I say I cannot recall every single page of those regional reports or the factual reports, but part of that task force responsibility was to check on those facts that the regional staff had brought to headquarters or had sent forward to headquarters. If there had been some difference in terms of particular numbers, what could have happened was that when the regions went back to check, there might have been a mistake. That could have happened.

Mr. WEISS. As a general proposition now, does OCR believe that the States should implement the measures they agreed to in their desegregation plan?

Ms. CORO. Oh, yes.

Mr. WEISS. So that if in fact the task force findings are correct, that in fact Georgia did not meet its commitment, has not lived up to its commitments, then OCR believes that in fact the State should be living up to the commitments it made?

Ms. CORO. That depends on the particular commitment and the particular measure. I mean you are talking about, again, hundreds of action steps that were taken. I don't think I should speak to a particular step or a particular measure.

Mr. WEISS. The specific I gave you was, for example, enhancement classes at traditionally black institutions are underfunded and recruitment commitments have not been fulfilled. Those are commitments that the State of Georgia had made.

Now does OCR believe that the State of Georgia should implement the measures they agreed to in their desegregation plan?

Ms. CORO. Well, I have to find out the reasons why they didn't implement those measures, but again I say we will go back and make sure that the information is correct, because there could have been a mistake on the part of regional staff in that particular measure that you are talking about you see. Again, there were hundreds or thousands of action steps.

Mr. WEISS. North Carolina, again, according to the status report, has not lived up to its desegregation commitments. For example, the State promised to provide $12 million to increase the number of blacks enrolled in college transfer programs, but reneged on nearly $8 million of that amount.

Ms. **Coro**. I don't know the reasons for that.

Mr. **Weiss**. Now it is not surprising that minority transfers have not increased as promised. Do you believe the State of North Carolina should have lived up to that commitment?

Ms. **Coro**. They may have reasons for not having been able to do that. I do not know. This is again the opportunity for the State of North Carolina to say we could not do those things because of this or that or the other. I don't know whether the State legislature never gave them the money. I do not know. That could be one reason. I am just coming up with a reason. I don't know. I don't think I can talk about the specifics of the plan.

Mr. **Weiss**. Now the regional status reports are based on onsite reviews conducted by the OCR staff?

Ms. **Coro**. That was part of the information. That was not the only information.

Mr. **Weiss**. These onsite reports have been provided to the subcommittee, too, is that correct?

Ms. **Coro**. That is my understanding, sir.

Mr. **Weiss**. At this point, I would ask, without objection, that those onsite reports go into the record.

[The onsite reports are in the subcommittee's files.]

Mr. **Weiss**. OCR is responsible for ensuring that the measures agreed to in the 10-State desegregation plans are implemented, is that correct? That is your job, isn't it?

Ms. **Coro**. To make sure they implemented measures?

Mr. **Weiss**. Yes.

Ms. **Coro**. We monitor the implementation of the measures, of course. That's our job.

Mr. **Weiss**. Right, and did the onsite reports find that all the measures agreed to by each State were implemented?

Ms. **Coro**. I don't know. I couldn't answer that question now. There were 254 institutions, and the institutions had individual plans. How could I know right now this very minute whether all the measures were implemented?

Mr. **Weiss**. At the University of Virginia, OCR learned black recruitment measures agreed to by the school were not adequately funded and the school admitted it had not even bothered to monitor its compliance with the desegregation plan. Are these types of problems acceptable to the Department of Education.

Ms. **Coro**. You are talking about, again about one, one particular aspect of that particular institution's plan and implementation of those measures.

Mr. **Weiss**. That is your job. Isn't that your job?

Ms. **Coro**. I am saying again, that is included. We consolidated it all in one State report, and the State report has that information. It should be in the State report. We have not made a decision whether the State is in compliance or not.

If that information is in the report, then we will consider that as part of our decisionmaking, but you want me to say that I will have to base my decision on that particular instance?

Mr. **Weiss**. I want to know whether in fact you find it acceptable that the university failed to live up to its commitments, and did not even bother to monitor its compliance.

Ms. **Coro**. But also you have to look at all the other things that they did. What would you say when they implemented all the other measures that they said they were going to implement, do you disregard that?

Mr. **Weiss**. Well, when a State or a university enters into a desegregation plan and it becomes clear that they are not living up to it, it seems to me that clearly there is a violation.

Ms. **Coro**. Mr. Chairman, again I don't think I can respond to any specific comments about the 254 institutions in the 10 States and in these factual reports because there are hundreds of pages in the reports.

I would be very pleased to respond to any specific concern that you have in writing, but I mean, this very minute it is impossible for me to do that.

Mr. **Weiss**. In North Carolina, an official at the Vance-Granville Community College told OCR personnel that he saw no reason to recruit black students. As a State-supported junior college, the school is covered by the North Carolina desegregation plan.

Assuming that those facts are correct, wasn't it required to recruit black students?

Ms. **Coro**. The answer is if that was in the plan, that's what they were supposed to do. That's the answer that I would give, but I don't know the reason. I don't know the particular reason of why a particular measure was not implemented. That's what I am trying to explain.

Mr. **Weiss**. If a school official told OCR staff it did not want to include black faculty or students because it did not want to face a reverse discrimination lawsuit, is that sufficient justification for not implementing recruitment measures contained in the Florida desegregation plan?

Ms. **Coro**. That may not be an objective where you are presenting information, and we have also to make sure that we represent objective information and not just an opinion of someone who was interviewed.

I think the information should be based on facts—what did the institution do, why did the institution do it, what did the institution not do, or not an opinion of someone on the staff.

Mr. **Weiss**. In 1977, the *Adams* court directed the Federal Government to develop criteria to determine exactly what constitutes an acceptable desegregation plan within the States involved in the *Adams* litigation. Is that correct?

Ms. **Coro**. You are talking about the——

Mr. **Weiss**. 1977, the *Adams* court directed the Federal Government to develop——

Ms. **Coro**. That is my understanding, yes.

Mr. **Weiss**. Now OCR has provided the subcommittee with the analysis of these criteria. Without objection, I will enter them into the record at this point.

[The material follows:]

DRAFT

Analysis of Revised Criteria

PURPOSE

To discuss, in summary form, each of the Amended Criteria 1/ that has a numerical basis.

BACKGROUND

In 1977, HEW was directed by the Adams court (cite Pratt's Second Supplemental Order) to develop criteria for the ingredients of acceptable desegregation plans and to apply these criteria in renegotiating plans with six 2/ of the eight states that had had statewide plans approved in 1974. A Blue Ribbon Panel of members from the higher education community, interested civil rights groups, and HEW officials was assembled by the Secretary of HEW to assist in the development of the criteria. This panel recommended that the criteria include numerical goals and that the states and institutions be allowed to develop measures to accomplish the goals that would not be approved by Federal civil rights officials because these measures would involve educational practices.

In the Amended Criteria, seven student, four employment, and one governance criteria have a numerical basis. These criteria were written in general terms to give the states latitude in expressing and then monitoring their numerical goals. Prior to the issuance of the Amended Criteria, states implementing higher education desegregation plans had been reporting data to OCR using the OCR 1000 (in 1976) and OCR 2000 (in 1977) reporting system. Supplemental forms were developed and issued with the OCR 3000 for the 1978-79 academic year reports. They attempted to capture the data that would be needed to track the goals in the Amended Criteria. For those subject areas where the ED Center for Statistics (formerly NCES) collects data biennially (i.e., student enrollment and earned degrees) and EEOC collects employment data biennially, OCR asked these states to provide the data annually, using the ED/CS and EEOC instruments. As states began to track progress under their goals using information provided in all of the above, there was considerable variation in the way in which the states used the data to monitor progress.

DISCUSSION

Attached at Tab A is an abstract for each of the numerical goals included in the Amended Criteria. Each abstract provides the following information: 1) precise goal language; 2) discussion of the goal, in narrative terms, including some of the assumptions upon which it was based and problems inherit in attempting to monitor progress under the goal; 3) data requirements and sources for monitoring progress under the goal; and, 4) examples of variations among the states in their plans commitments and methods for measuring progress.

1/ Amended Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (42 FR 4078)

2/ Arkansas, Florida, Georgia, North Carolina, Oklahoma, Virginia (Maryland and Pennsylvania, because they were covered by other court actions, were not covered by the Second Supplemental Order).

DRAFT

NUMERICAL GOALS IN AMENDED CRITERIA

STUDENTS

II.A. Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system taken as a whole, and the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.

II.B.(1) Adopt the goal that there shall be an annual increase, to be specified by each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution.

II.B.(2) Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the current disparity by at least fifty percent by the academic year 1982-83.

II.C. Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system and enter such schools. This goal (and interim benchmarks or goals) shall be separately stated for each major field of graduate study.

II.D. Adopt the goal of increasing the total proportion of white students attending traditionally black institutions (TBIs).

II.E. Commit the state to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the two year, four year, and graduate public institutions of higher education, and establish interim goals, to be specified by the state system, for achieving annual progress.

II.F. Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.

DRAFT

NUMERICAL GOALS IN AMENDED CRITERIA

EMPLOYMENT AND GOVERNANCE

III.A. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board, or any other state higher education entity, in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with masters degrees from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.

III.B. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board or any other state higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

III.C. Adopt the goal that the proportion of black non-academic personnel (by job category) at each institution and on the staffs of each governing board or any other state higher education entity, shall at least equal the proportion of black persons in the relevant labor market area.

III.D. Assure hereafter and until the foregoing goals are met that for the traditionally white institutions as a whole, the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

III.G. Adopt the goal of increasing the numbers of black persons appointed to systemwide and institutional governing boards and agencies so that these boards may be more representative of the racial population of the state or of the area served.

DRAF

GOAL II.A.- STATEWIDE EQUAL ACCESS TO PUBLIC HIGHER EDUCATION

1. Goal Language

Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system taken as a whole, and the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.

2. Discussion of Goal

This goal represents a commitment to have equal access to higher education, statewide, for black and white students. It is based on the assumption that, absent vestiges of the former system of higher education, the rate of black high school graduates in the state who go on to college would be comparable to the rate of white high school graduates going on to college. The many other characteristics of students entering higher education are assumed to be constant between the races (e.g., students applying from out-of-state; older students, not immediately out of high school).

3. Data Requirements, Formulations, and Sources

Two types of data are needed to evaluate progress toward this goal: 1) the number of high school graduates from schools within the state, by race; and, 2) the number of within-state students entering college for the first-time, by race. There are two primary methods to formulate the evaluation.

Method 1 (example)

Exactly as stated in II.A., compare black high school graduates going on to college with white high school graduates going on to college:

	Spring 1986 Florida H.S. Graduates	Fall 1986 Students Entering College	Entering Rate	Disparity
Black	2396	1561	65.2%	
White	30384	22740	74.8%	9.6%

Method 2 (example)

Comparing black high school graduation rates with black college entrance rates:

Spring 1986 Black Florida H.S. Graduates	Fall 1986 Blacks Entering College	Disparity
20.8% (of high school graduation class)	12.6% (of first-time-in-college students)	8.2%

The data sources used for the high school graduation numbers are: the E & S Survey, or state data. Data sources for the entering college numbers are: the OCR B1 Report for the number of within state students entering public colleges, or the ED (CS) G50-14P-EF Fall Enrollment Report (formerly the HEGIS 2300-2.3) which does not include residency information.

4. Variations Among States in Goal Language and Methods of Measuring Progress

DRAFT

GOAL II.B.(1) - INCREASE BLACK UNDERGRADUATE ENROLLMENT AT TRADITIONALLY WHITE INSTITUTIONS

1. Goal Language

Adopt the goal that there shall be an annual increase, to be specified by each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution.

2. Goal Discussion

This goal is for a general increase in the proportion of black students enrolled at the undergraduate level of the four-year traditionally white institutions (TWIs). Each institution, and the TWIs taken as a whole, were to set annual goals to reflect unspecified increases of black students. The assumption behind this goal is that in formerly dual state systems, the higher education needs of blacks were being disproportionately met by the TBIs.

3. Data Requirements, Formulations, and Sources

To evaluate progress toward this goal, the number of undergraduate students enrolled at each TWI, and aggregated to include all TWIs, by race, is needed each year. The number of blacks in these data are compared to the expressed annual goals. The data source is the ED (CS) G50-14P-EF Fall Enrollment Report (formerly the HEGIS 2300-2.3) for undergraduate full and part-time enrollment. The goals are included in the state plans.

4. Variations Among States in Goal Language and Methods of Measuring Progress

GOAL II.B.(2) - REDUCE THE DISPARITY IN BLACK AND WHITE STUDENT ENTRANCE TO TWIS

1. Goal Language

Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the current disparity by at least fifty percent by the academic year 1982-83. However, this shall not require any state to increase by that date black student admissions by more than 150 percent above the admissions for the academic year of 1976-1977.

2. Goal Discussion

This goal augments the II.B.(1) goal for black enrollment at four-year undergraduate TWIs and places emphasis on the entering black students. The objective was to reduce by 50 percent the base disparity between blacks and whites entering the TWIs by the end of the five-year plan. As written in the Amended Criteria, it is not clear whether this goal was to be applied to each TWI or to TWIs, as a whole, or to both. It also is not clear if entering transfer students are to be included. There were several aspects of the state higher education systems that influenced the language of this criterion in 1977. Florida had upper division TWIs (i.e., junior and senior year baccalaureate programs and graduate programs). In 1983, Florida converted these institutions to include the full four-years of a baccalaureate program. Also, in 1977, HEW was negotiating with the University of North Carolina (UNC) system, which had five traditionally black institutions (TBIs) and six TWIs. The 150 percent cap was included in II.B.(2) because it was believed that eliminating one half of the disparity at the TWIs over the five year plan would have a negative impact on North Carolina's TBIs that were just beginning enhancement programs, and, would not be successful in competing with the TWIs.

3. Data Requirements, Formulations, and Sources

If this goal is read not to include transfer students, two types of data are needed annually to evaluate progress: a) the number of high school graduates in the state, by race; and, b) the number of within-state students entering TWIs for the first time, by race. If it is read to include transfer students, the annual data needs also include: a) the number of within-state students transferring into TWIs, by race; and, b) the number of within-state students who completed associate degree programs at the state's two-year institutions, by race. There are two methods for formulating the evaluation: a) apply the criterion to the statewide aggregate of TWIs and determine the required change at the state level; or, b) apply the criterion to each institution and aggregate the results to the state level. The data sources for high school graduates and entering freshmen are the same as for goal II.A, the E & S Survey and the OCR B1 Report. The data sources for transfer students are the OCR B1 Report for enrollment data and the HEGIS 2300-2.1 Earned Degrees Report for completion data.

4. Variation Among States in Goal Language and Methods of Measuring Progress

DRAF

II.C. - EQUAL ACCESS TO GRADUATE/FIRST PROFESSIONAL EDUCATION

1. Goal Lanaguage

Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system and enter such schools. This goal (and interim benchmarks or goals) shall be separately stated for each major field of graduate study.

2. Goal Discussion

This goal represents a commitment to have equal access to graduate level higher education, statewide, for blacks and whites. As in goal II.A., it is based on certain assumptions, primarily that the progression rate of black and white baccalaureate degree earners to the graduate level study should be equal, absent the vestiges of the dual system of higher education, and that other characteristics of entering students are constant between the races. Because graduate/first professional programs have differing requirements as undergraduate prerequisites, states were to identify the acceptable undergraduate feeder disciplines for the major fields of graduate study.

3. Data Requirements, Formulations, and Sources

To evaluate progress towards this goal, three types of data are needed annually: a) the number of state residents graduated with a baccalaureate degree from undergraduate institutions in the state system, by race and by major field of study; and, b) the number of state residents who enter graduate/first-professional study, by race and major field of study; and c) the feeder disciplines identified by each state. There are no Federally collected data to use to evaluate progress toward this goal unless the residency component is disregarded. The graduation/completion data, without the within-state element, are available in the HEGIS 2300-2.1 Report. The graduate level enrollment data are available in the ED (CS) G50-14P-EF Report (formerly the HEGIS 2300-2.3 Report). The feeder disciplines are available in the state plans or supplemental documents from the state. To formulate the evaluation of progress, the enrollment data, grouped according to the state-identified feeder disciplines and by race, are compared to the undergraduate graduation data, grouped similarly. The disparity is any difference between the black and the white student progression from the appropriate feeder disciplines to the graduate level.

4. Variation Among States in Goal Language and Methods of Measuring Progress

DRAF

GOAL II.D. - INCREASE WHITE ENROLLMENT AT TRADITIONALLY BLACK INSTITUTIONS

1. Goal Language

Adopt the goal of increasing the total proportion of white students attending traditionally black institutions (TBIs).

2. Goal Discussion

This goal is for a general increase in the proportion of white students enrolled at the undergraduate level of the four-year traditionally black institutions (TBIs). According to the Amended Criteria, because of the "unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks," (Civil Action No. 3095-70; Second Supplemental Order at page 4), two steps are to precede establishment of numerical goals for white enrollment at the TBIs: a) an increasing enrollment of black students in the higher education system and at the TWIs; and, b) accomplishment of specific steps to strengthen/enhance the TBIs. This goal is not limited to undergraduate enrollment, as its counterpart, II.B.(1), for TWIs.

3. Data Requirements, Formulations, and Sources

To evaluate progress toward this goal, the number of undergraduate students enrolled at each TBI, and aggregated to include all TBIs, by race, is needed each year. The number of whites in these data are compared to the expressed annual goals. The data source is the ED (CS) G50-14P-EF (formerly the HEGIS 2300-2.3 Report) for undergraduate and graduate enrollment.

4. Variations Among States in Goal Language and Methods of Measuring Progress

GOAL II.E. - REDUCE ANY DISPARITY BETWEEN BLACK AND WHITE STUDENTS COMPLETION/GRADUATION RATES

1. Goal Language

Commit the state to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the two year, four year, and graduate public institutions of higher education, and establish interim goals, to be specified by the state system, for achieving annual progress.

2. Goal Discussion

This goal includes a commitment to reduce any disparity in the retention of black and white students at all levels of higher education. The disparity is measured in terms of the proportion of blacks graduating from two, four, and graduate degree programs compared to the proportion of whites graduating at the similar levels. The goal separately considers each level of study. There are several assumptions in this goal that are problemmatic. The goal is formulated using the model of higher education study that a student enters as a freshman, and four years later, at that same institution, the student in the model completes the baccalaureate degree program. Correcting for such characteristics as student transfers, stopping-in-and-out of study programs, enrolling as part-time students is very difficult and of questionable value. The viable alternative is the student tracking procedures, which most of the states adopted, to accomplish the overall objective of identifying and correcting disparity in retention rates of blacks and whites.

3. Data Requirements, Formulations, and Sources

The data requirements and formulations are equally complex. There is no one method for evaluating progress under this goal. Data generally are available in student tracking systems in the states, in the OCR B6 Report, in the HEGIS 2300-2.1 Report. Because of the wide variation among the states in collecting information and evaluating progress, a standard approach to measuring states' progress under this goal is not available.

4. Variation Among States in Goal Language and Methods of Measuring Progress

DRA

GOAL II.F. - EXPAND MOBILITY BETWEEN TWO AND FOUR YEAR INSTITUTIONS

1. Goal Language

Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.

2. Goal Discussion

This goal has no standard formulation for evaluating progress made by the states to expand mobility between the two and four year institutions. Procedures in state systems of higher education regarding student movement from two to four year institutions vary greatly. Therefore, efforts to expand mobility would take many different forms in order to accomplish this goal. Since the adoption of the Amended Criteria, some of the states have implemented standardized tests in order for students to progress to the upper level of a baccalaureate program (e.g., Georgia; Florida).

3. Data Requirements, Formulations, and Sources

There are two types of annual data needed to evaluate progress under this goal: a) the number of students completing/graduating, by race and level; b) the number of students who progress from the two year to the four year institutions, by race. There are no Federally collected data to show the number of these students. State retention data can be used to assess mobility.

4. Variations Among States in Goal Language and Methods of Measuring Progress

DRA

GOAL III.A. - EMPLOYMENT OF BLACKS (IN PROFESSIONAL POSITIONS NOT REQUIRING THE DOCTORATE) EQUAL TO BLACKS RECEIVING MASTERS DEGREES

1. Goal Language

Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board, or any other state higher education entity, in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with masters degrees from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.

2. Goal Discussion

This goal is to have blacks employed in executive/administrative/managerial positions (E/A/M) and instructional faculty positions that do not require a doctoral degree in the same proportion as the proportion of blacks graduated with masters degrees in the state. The goal applies to institutions and to staffs of governing boards and state higher education entities. The goal is to be established separately for the E/A/M employment category and the instructional faculty category.

3. Data Requirements, Formulations, and Sources

There are three types of annual data needed to evaluate progress toward this goal: a) the number of E/A/M and instructional faculty employed at each institution, by race, and degree held; b) the number of professional employees on staffs of governing boards and higher education entities, by race and degree held; and, c) the number of graduates with masters degrees from institutions in the state, by race. (For states that elected to use labor market data or used E.O. 11246 plans for establishing the baseline for this goal, the numbers are contained in the plans or state-generated labor market data.) Institutional employment data are provided annually in the OCR EEO-6 Supplement. Data regarding staff employed by higher education agencies and governing boards are provided annually in the OCR A2a Report.

4. Variation Among States in Goal Language and Methods of Measuring Progress

DRAF

GOAL III.B. - EMPLOYMENT OF BLACKS (IN POSITIONS REQUIRING THE DOCTORATE) EQUAL TO BLACKS WITH DOCTORATES IN RELEVANT LABOR MARKET

1. Goal Language

Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board or any other state higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

2. Goal Discussion

This goal is to have blacks employed in executive/administrative/managerial positions (E/A/M) and instructional faculty positions that require a doctoral degree in the same proportion as the proportion of blacks holding doctoral degrees in the relevant labor market area. The goal applies to institutions and to staffs of governing boards and state higher education entities. The goal is to be established separately for the E/A/M employment category and the instructional faculty category.

3. Data Requirements, Formulations, and Sources

There are three types of annual data needed to evaluate progress toward this goal: a) the number of E/A/M and instructional faculty employed at each institution, by race, and degree held; b) the number of professional employees on staffs of governing boards and higher education entities, by race and degree held; and, c) the number of graduates with doctorate degrees from institutions in the state, by race. (For states that elected to use labor market data or used E.O. 11246 plans for establishing the baseline for this goal, the numbers are contained in the plans or state-generated labor market data.) Institutional employment data are provided annually in the OCR EEO-6 Supplement. Data regarding staff employed by higher education agencies and governing boards are provided annually in the OCR A2a Report.

4. Variation Among States in Goal Language and Methods of Measuring Progress

DRA

GOAL III.C. - EMPLOYMENT OF BLACKS IN NON-ACADEMIC POSITIONS EQUAL BLACKS IN THE RELEVANT LABOR MARKET

1. Goal Language

Adopt the goal that the proportion of black non-academic personnel (by job category) at each institution and on the staffs of each governing board or any other state higher education entity, shall at least equal the proportion of black persons in the relevant labor market area.

2. Goal Discussion

This goal is to have blacks employed in each of the non-academic EEO-6 employment categories in the same proportion as the proportion of blacks in the relevant labor market area. The goal applies to institutions and to staffs of governing boards and state higher education entities. The goal is to be established separately for the following employment categories: secretarial/clerical; technical/paraprofessional; skilled crafts; and, service/maintenance.

3. Data Requirements, Formulations, and Sources

There are three types of annual data needed to evaluate progress toward this goal: a) the number of non-academic staff employed at each institution, by race, and EEO-6 employment category; b) the number of non-professional employees on staffs of governing boards and higher education entities, by race and EEO-6 employment category; and, c) the number of individuals in the relevant labor markets, by race and EEO-6 employment category. (For states that elected to use labor market data or used E.O. 11246 plans for establishing the baseline for this goal, the numbers are contained in the plans.) Institutional employment data are provided annually in the OCR EEO-6 Report. Data regarding staff employed by higher education agencies and governing boards are provided annually in the OCR A2a Report.

4. Variation Among States in Goal Language and Methods of Measuring Progress

III.G. - BLACK REPRESENTATION ON HIGHER EDUCATION GOVERNING BOARDS EQUAL TO BLACK POPULATION IN STATE OR AREA SERVED

1. Goal Language

Adopt the goal of increasing the numbers of black persons appointed to systemwide and institutional governing boards and agencies so that these boards may be more representative of the racial population of the state or of the area served.

2. Goal Discussion

This goal is to have a racial composition of higher education governing boards that is reflective of the racial population of the state or an institution's service area. Accomplishing this goal can be problemmatic in those states with elected boards or a high number of board positions reserved for individuals in ex officio positions.

3. Data Requirements, Formulations, and Sources

There are two types of data needed to evaluate progress toward this goal: a) the number of members of each governing board, by race; and, b) the number of people in the state or in an institution's service, by race. The information regarding the composition of the boards is provided annually in the OCR A5 Report. The best population data are those provided in the U.S. Census Reports.

4. Variation Among States in Goal Language and Methods of Measuring Progress

State plans, generally, presented clearly stated goals for boards of governance. Florida's State University System established the statewide black population of 12.7 percent as its goal for its Board of Regents; Florida's Community College System established the statewide population, rounded to 13 percent, for the system, and established an additional goal of black representation on each of the 28 community college boards. Because Florida's governor appoints a percentage of the community college board positions and regent positions, procedurally, meeting this goal was not difficult for Florida.

D

NUMERICAL GOALS IN AMENDED CRITERIA

STUDENTS

II.A. Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system taken as a whole, and the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.

II.B.(1) Adopt the goal that there shall be an annual increase, to be specified by each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution.

II.B.(2) Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the current disparity by at least fifty percent by the academic year 1982-83.

II.C. Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system and enter such schools. This goal (and interim benchmarks or goals) shall be separately stated for each major field of graduate study.

II.D. Adopt the goal of increasing the total proportion of white students attending traditionally black institutions (TBIs).

II.E. Commit the state to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the two year, four year, and graduate public institutions of higher education, and establish interim goals, to be specified by the state system, for achieving annual progress.

II.F. Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.

DRAFT

NUMERICAL GOALS IN AMENDED CRITERIA

EMPLOYMENT AND GOVERNANCE

III.A. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board, or any other state higher education entity, in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with masters degrees from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.

III.B. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board or any other state higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

III.C. Adopt the goal that the proportion of black non-academic personnel (by job category) at each institution and on the staffs of each governing board or any other state higher education entity, shall at least equal the proportion of black persons in the relevant labor market area.

III.D. Assure hereafter and until the foregoing goals are met that for the traditionally white institutions as a whole, the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

III.G. Adopt the goal of increasing the numbers of black persons appointed to systemwide and institutional governing boards and agencies so that these boards may be more representative of the racial population of the state or of the area served.

PURPOSE

To discuss, in summary form, each of the Amended Criteria 1/ that has a numerical basis.

BACKGROUND

In 1977, HEW was directed by the Adams court (cite Pratt's Second Supplemental Order) to develop criteria for the ingredients of acceptable desegregation plans and to apply these criteria in renegotiating plans with six 2/ of the eight states that had had statewide plans approved in 1974. A Blue Ribbon Panel of members from the higher education community, interested civil rights groups, and HEW officials was assembled by the Secretary of HEW to assist in the development of the criteria. This panel recommended that the criteria include numerical goals and that the states and institutions be allowed to develop measures to accomplish the goals that would not be approved by Federal civil rights officials because these measures would involve educational practices.

In the Amended Criteria, six student, one governance, and four employment criteria have a numerical basis. These criteria were written in general terms to give the states latitude in expressing and then monitoring their numerical goals. Prior to the issuance of the Amended Criteria, states implementing higher education desegregation plans had been reporting data to OCR using the OCR 1000 (in 1976) and OCR 2000 (in 1977) reporting system. Supplemental forms were developed and issued with the OCR 3000 for the 1978-79 academic year reports. They attempted to capture the data that would be needed to track the goals in the Amended Criteria. As states began to track progress under their goals, however, there was considerable variation in the way in which the states used the data to monitor progress.

DISCUSSION

Attached at Tab A is an abstract for each of the numerical goals included in the Amended Criteria. Each abstract provides the following information: 1) precise goal language; 2) discussion of the goal, in narrative terms, including some of the assumptions upon which it was based and problems inherit in attempting to monitor progress under the goal; 3) data requirements and sources for monitoring progress under the goal; and, 4) examples of variations among the states in their plans commitments and methods for measuring progress.

1/ Amended Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (42 FR 4078)

2/ Arkansas, Florida, Georgia, North Carolina, Oklahoma, Virginia (Maryland and Pennsylvania, because they were covered by other court actions, were not covered by the Second Supplemental Order).

Attachments
  As Stated

DRAFT

GOAL II.A.- STATEWIDE EQUAL ACCESS TO PUBLIC HIGHER EDUCATION

1. Goal Language

Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system taken as a whole, and the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.

2. Discussion of Goal

This goal represents a commitment to have equal access to higher education, statewide, for black and white students. It is based on the assumption that, absent vestiges of the former system of higher education, the rate of black high school graduates in the state who go on to college would be comparable to the rate of white high school graduates going on to college. The many other characteristics of students entering higher education are assumed to be constant between the races (e.g., students applying from out-of-state; older students, not immediately out of high school).

3. Data Requirements, Formulations, and Sources

Two data functions are required to evaluate progress toward this goal: 1) the number of high school graduates from schools within the state, by race; and, 2) the number of within-state students entering college for the first-time, by race. There are two primary methods to formulate the evaluation.

Method 1 (example)

Exactly as stated in II.A., compare black high school graduates going on to college with white high school graduates going on to college:

	Spring 1986 Florida H.S. Graduates	Fall 1986 Students Entering College	Entering Rate	Disparity
Black	2396	1561	65.2%	
White	30384	22740	74.8%	9.6%

Method 2 (example)

Comparing black high school graduation rates with black college entrance rates:

Spring 1986 Black Florida H.S. Graduates	Fall 1986 Blacks Entering College	Disparity
20.8% (of high school graduation class)	12.6% (of first-time-in-college students)	8.2%

The data sources used for the high school graduation numbers are: the E & S Survey, or state data. Data sources for the entering college numbers are: the OCR B1 Report for the number of within state students entering public colleges, or the ED (CS) G50-14P-EF Fall Enrollment Report (formerly the HEGIS 2300-2.3) which does not include residency information.

4. Variations Among States in Goal Language and Methods of Measuring Progress

DRAF

GOAL II.B.(1) - INCREASE BLACK UNDERGRADUATE ENROLLMENT AT TRADITIONALLY WHITE INSTITUTIONS

1. Goal Language

Adopt the goal that there shall be an annual increase, to be specified by each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution.

2. Goal Discussion

This goal is for a general increase in the proportion of black students enrolled at the undergraduate level of the four-year traditionally white institutions (TWIs). Each institution, and the TWIs taken as a whole, were to set annual goals to reflect unspecified increases of black students. The assumption behind this goal is that in formerly dual state systems, the higher education needs of blacks were being disproportionately met by the TBIs.

3. Data Requirements, Formulations, and Sources

To evaluate progress toward this goal, the number of undergraduate students enrolled at each TWI, and aggregated to include all TWIs, by race, is needed each year. The number of blacks in these data are compared to the expressed annual goals. The data source is the HEGIS 2300-2.3 survey information for undergraduate full and part-time enrollment.

4. Variations Among States in Goal Language and Methods of Measuring Progress

DRAFT

GOAL II.B.(2) - REDUCE THE DISPARITY IN BLACK AND WHITE STUDENT ENTRANCE TO TWIS

1. Goal Language

Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the current disparity by at least fifty percent by the academic year 1982-83. However, this shall not require any state to increase by that date black student admissions by more than 150 percent above the admissions for the academic year of 1976-1977.

2. Goal Discussion

This goal augments the II.B.(1) goal for black enrollment at four-year undergraduate TWIs and places emphasis on the entering black students. The objective was to reduce by 50 percent the base disparity between blacks and whites entering the TWIs by the end of the five-year plan. As written in the Amended Criteria, it is not clear whether this goal was to be applied to each TWI or to TWIs, as a whole, or to both. It also is not clear if entering transfer students are to be included. There were several aspects of the state higher education systems that influenced the language of this criterion in 1977. Florida had upper division TWIs (i.e., junior and senior year baccalaureate programs and graduate programs). In 1983, Florida converted these institutions to include the full four-years of a baccalaureate program. Also, in 1977, HEW was negotiating with the University of North Carolina (UNC) system, which had five traditionally black institutions (TBIs) and six TWIs. The 150 percent cap was included in II.B.(2) because it was believed that eliminating one half of the disparity at the TWIs over the five year plan would have a negative impact on North Carolina's TBIs that were just beginning enhancement programs, and, would not be successful in competing with the TWIs.

3. Data Requirements, Formulations, and Sources

If this goal is read not to include transfer students, two types of data are needed annually to evaluate progress: a) the number of high school graduates in the state, by race; and, b) the number of within-state students entering TWIs for the first time, by race. If it is read to include transfer students, the annual data needs also include: a) the number of within-state students transferring into TWIs, by race; and, b) the number of within-state students who completed associate degree programs at the state's two-year institutions, by race. There are two methods for formulating the evaluation: a) apply the criterion to the statewide aggregate of TWIs and determine the required change at the state level; or, b) apply the criterion to each institution and aggregate the results to the state level. The data sources for high school graduates and entering freshmen are the same as for goal II.A, the E & S Survey and the OCR B1 Report. The data sources for transfer students are the OCR B1 Report for enrollment data and the HEGIS 2300-2.1 Earned Degrees Report for completion data.

4. Variation Among States in Goal Language and Methods of Measuring Progress

II.C. - INCREASE BLACK GRADUATE/FIRST PROFESSIONAL ENROLLMENT

DRAF

1. Goal Lanaguage

Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system and enter such schools. This goal (and interim benchmarks or goals) shall be separately stated for each major field of graduate study.

2. Goal Discussion

This goal represents a commitment to have equal access to graduate level higher education, statewide, for blacks and whites. As in goal II.A., it is based on certain assumptions, primarily that the progression rate of black and white baccalaureate degree earners to graduate level study should be equal, absent the vestiges of the dual system of higher education, and that other characteristics of entering students are constant between the races. Because graduate/first professional programs have differing requirements as undergraduate prerequisites, states were to identify the acceptable undergraduate feeder disciplines for the major fields of graduate study.

To evaluate progress towards this goal, two data functions are needed annually: a) the number of state residents graduated with a baccalaureate degree from undergraduate institutions in the state system, by race and by major field of study; and, b) the number of state residents who enter graduate/first-professional study, by race and major field of study. There are no Federally collected data to use to evaluate progress toward this goal unless the residency component is disregarded. The graduation/completion data, without the within-state element, are available in the HEGIS 2300-2.1 Report. The graduate level enrollment data are available in the ED (CS) G50-14P-EF Report (formerly the HEGIS 2300-2.3 Report). To formulate the evaluation of progress, the enrollment data, grouped according to the state-identified feeder disciplines and by race, are compared to the undergraduate graduation data, grouped similarly. The disparity is any difference between the black and the white student progression from the appropriate feeder disciplines to the graduate level.

4. Variation Among States in Goal Language and Methods of Measuring Progress

DRAFT

GOAL II.D. - INCREASE WHITE ENROLLMENT AT TRADITIONALLY BLACK INSTITUTIONS

1. Goal Language

Adopt the goal of increasing the total proportion of white students attending traditionally black institutions (TBIs).

2. Goal Discussion

This goal is for a general increase in the proportion of white students enrolled at the undergraduate level of the four-year traditionally black institutions (TBIs). According to the Amended Criteria, because of the "unequal status of the Black colleges and the real danger that desegregation will diminish higher education opportunities for Blacks," (Civil Action No. 3095-70; Second Supplemental Order at page 4), two steps are to precede establishment of numerical goals for white enrollment at the TBIs: a) an increasing enrollment of black students in the higher education system and at the TWIs; and, b) accomplishment of specific steps to strengthen/enhance the TBIs. This goal is not limited to undergraduate enrollment, as its counterpart, II.B.(1). for TWIs.

3. Data Requirements, Formulations, and Sources

To evaluate progress toward this goal, the number of undergraduate students enrolled at each TBI, and aggregated to include all TBIs, by race, is needed each year. The number of whites in these data are compared to the expressed annual goals. The data source is the ED (CS) G50-14P-EF (formerly the HEGIS 2300-2.3 Report) for undergraduate and graduate enrollment.

4. Variations Among States in Goal Language and Methods of Measuring Progress

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GOAL II.F. - EXPAND MOBILITY BETWEEN TWO AND FOUR YEAR INSTITUTIONS

1. Goal Language

Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.

2. Goal Discussion

This goal has no standard formulation for evaluating progress made by the states to expand mobility between the two and four year institutions. Procedures in state systems of higher education regarding student movement from two to four year institutions vary greatly. Therefore, efforts to expand mobility would take many different forms in order to accomplish this goal. Since the adoption of the *Amended Criteria*, some of the states have implemented standardized tests in order for students to progress to the upper level of a baccalaureate program. (e.g., Georgia; Florida).

3. Data Requirements, Formulations, and Sources

There annual data needed to evaluate implementation of this goal and the widely varied system requirements and procedures inhibit any standard data needs or formulations. The completion data, generally, are available in the HEGIS 2300-2.1 Report; however, there are no Federally collected data to show the number of these students who progress from the two year to the four year institutions, by race. State retention data can be used to assess mobility.

4. Variations Among States in Goal Language and Methods of Measuring Progress

DRAF

NUMERICAL GOALS IN AMENDED CRITERIA

STUDENTS

II.A. Adopt the goal that for two year and four year undergraduate public higher education institutions in the state system taken as a whole, and the proportion of black high school graduates throughout the state who enter such institutions shall be at least equal to the proportion of white high school graduates throughout the state who enter such institutions.

II.B.(1) Adopt the goal that there shall be an annual increase, to be specified by each state system, in the proportion of black students in the traditionally white four year undergraduate public higher education institutions in the state system taken as a whole and in each such institution.

II.B.(2) Adopt the objective of reducing the disparity between the proportion of black high school graduates and the proportion of white high school graduates entering traditionally white four year and upper division undergraduate public higher education institutions in the state system; and adopt the goal of reducing the current disparity by at least fifty percent by the academic year 1982-83.

II.C. Adopt the goal that the proportion of black state residents who graduate from undergraduate institutions in the state system and enter graduate study or professional schools in the state system shall be at least equal to the proportion of white state residents who graduate from undergraduate institutions in the state system and enter such schools. This goal (and interim benchmarks or goals) shall be separately stated for each major field of graduate study.

II.D. Adopt the goal of increasing the total proportion of white students attending traditionally black institutions (TBIs).

II.E. Commit the state to take all reasonable steps to reduce any disparity between the proportion of black and white students completing and graduating from the two year, four year, and graduate public institutions of higher education, and establish interim goals, to be specified by the state system, for achieving annual progress.

II.F. Commit the state to expand mobility between two year and four year institutions as a means of meeting the goals set forth in these criteria.

DRAFT

NUMERICAL GOALS IN AMENDED CRITERIA

EMPLOYMENT AND GOVERNANCE

III.A. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board, or any other state higher education entity, in positions not requiring the doctoral degree, shall at least equal the proportion of black students graduating with masters degrees from institutions within the state system, or the proportion of black individuals with the required credentials for such positions in the relevant labor market area, whichever is greater.

III.B. Adopt the goal that the proportion of black faculty and of administrators at each institution and on the staffs of each governing board or any other state higher education entity, in positions requiring the doctoral degree, shall at least equal the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

III.C. Adopt the goal that the proportion of black non-academic personnel (by job category) at each institution and on the staffs of each governing board or any other state higher education entity, shall at least equal the proportion of black persons in the relevant labor market area.

III.D. Assure hereafter and until the foregoing goals are met that for the traditionally white institutions as a whole, the proportion of blacks hired to fill faculty and administrative vacancies shall not be less than the proportion of black individuals with the credentials required for such positions in the relevant labor market area.

III.G. Adopt the goal of increasing the numbers of black persons appointed to systemwide and institutional governing boards and agencies so that these boards may be more representative of the racial population of the state or of the area served.

LIST OF BACKGROUND DOCUMENTS

1. Fourth Annual Status Report - 1985; American Council On Education, Office of Minority Concerns.

2. Equality and Excellence - The Educational Status of Black Americans; College Entrance Examination Board; New York, 1985.

3. Social and Economic Factors Affecting Participation in Higher Education; Stafford, Lundstedt and Lynn, Jr.; Journal of Higher Education, Vol 55, No. 5 (September/October 1984).

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5. Enrollment in Higher Education - Have Projected Declines Occurred? Janice Petrovich; Educational Record, Fall 1984.

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7. Access To Higher Education: The Experience of Blacks, Hispanics and Low Socio-Economic Status Whites; Valerie Lee; American Council on Education, Division of Policy Analysis and Research; May 1985.

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9. Participation of Black Students in Higher Education; A Statistical Profile from 1970-71 to 1980-81; Susan T. Hill; National Center for Education Statistics; November 1983.

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11. The Traditionally Black Institutions of Higher Education: Their Development and Status, 1860 to 1982; National Center for Education Statistics, Historical Report; March 1985.

12. List of Historically Black Colleges and Universities - March 1986.

13. Trends in the Participation of Hispanics and Blacks in Higher Education 1975 to 1982; Susan Hill; National Center for Education Statistics.

14. White House Initiative on Historically Black Colleges and Universities; Annual Federal Performance Report on Executive Agency Actions to Assist Historically Black Colleges and Universities for Fiscal Year 1984.

15. Annual Federal Plan for Assistance to Historically Black Colleges and Universities - Fiscal Year 1986; Prepared by the White House Initiative on Historically Black Colleges and Universities.

Mr. **Weiss**. According to OCR's analysis, a blue ribbon panel of members from colleges, civil rights groups, and Federal officials was assembled to develop the criteria. The panel recommended that the criteria include numerical goals. Is that correct? Is that your understanding?

Ms. **Coro**. That is my understanding.

Mr. **Weiss**. The panel also recommended that the institutions affected by the desegregation plans develop their own numerical goals. Is that correct?

Ms. **Coro**. Yes.

Mr. **Weiss**. Then the goals contained in the desegregation plans were established by the schools themselves and not by the Federal Government. Is that correct?

Ms. **Coro**. Yes.

Mr. **Weiss**. Then in summation, a Federal court ordered the criteria, all the parties concerned agreed that the criteria should require numerical goals, and the schools set their own goals. That is what happened, right?

Now are you familiar with the U.S. Court of Appeals Sixth Circuit decision in *Geier* v. *Alexander*? That is a case in which the court ruled last year that the use of numerical goals to desegregate a State system of higher education and eliminate the residual effects of previously illegal dual systems of education was legal and did not deprive nonminority students of equal protection under the civil rights laws. That is what the court decided to do. You don't disagree with that, do you?

Ms. **Coro**. That is a decision of the court. Whether I agree or disagree is immaterial. That's a decision of the court.

Mr. **Weiss**. You know that is in fact a decision of the court?

Ms. **Coro**. Isn't that a decision of the court?

Mr. **Kiko**. If that is what you represent as what the court said, I would agree.

Mr. **Weiss**. OK. Now, do the court-ordered criteria require that the proportion of black high school graduates be equal to the proportion of white high school graduates throughout the State who enter 2- and 4-year colleges? I should ask that, when they don't, doesn't the court order in fact require that?

Ms. **Coro**. The criteria, well, I would have to look at the criteria. My understanding is that the criteria include the specific numbers, but based on the percentage of graduates. We can look at the criteria right here.

Mr. **Weiss**. You will not disagree that that is what the court-ordered criteria said? Now has this goal been met, do you know, in all the 10 States whose desegregation plans have expired?

Ms. **Coro**. Have they met?

Mr. **Weiss**. Have they met that requirement, that criteria, that the proportion of black high school graduates be equal to the proportion of white high school graduates throughout the State who entered 2- and 4-year colleges?

Ms. **Coro**. You are asking me about the 10 States, whether they have met the criteria?

Mr. **Weiss**. Right.

Ms. Coro. I don't think I can answer that question. Based on the numbers that I have seen, in many instances, they have not met the criteria.

Mr. Weiss. Has the goal been met in any of the 10 States to your knowledge?

Ms. Coro. I don't know, Mr. Chairman. I will have to look at all the factual reports and provide that information.

I understand that some States have met those numbers, but I don't think I should——

Mr. Weiss. Our information is that it has not been met, but I would appreciate your submitting that information for the record.

Ms. Coro. We will, sir.

[The information follows:]

Please note that the criteria listed in the document *Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education (Revised Criteria)* are intended only as guidelines in formulating acceptable desegregation plans. Not every State was required to set goals under all criteria.

Of the ten States in question, six States (Arkansas, Delaware, Georgia, Oklahoma, South Carolina, and Virginia) developed Statewide goals to achieve parity in the college entrance rates of black and white high school graduates. None of them met that goal, although Delaware and South Carolina showed progress.

Mr. Weiss. Under the court-ordered criteria, isn't each State required to reduce the disparity between the proportion of black high school graduates and the proportion of white high school graduates in traditionally white 4-year colleges by at least 50 percent by the school year 1982–1983?

Ms. Coro. I assume that is what is in the criteria.

Mr. Weiss. Now do you know whether that goal has been met in all 10 States under discussion today?

Ms. Coro. I do not know if all the States have met that.

Mr. Weiss. In fact, the disparity has increased in some of the States, hasn't it?

Ms. Coro. I understand that may be the case in some States.

Mr. Weiss. The criteria require that certain proportions of black faculty and administrators be hired at each institution covered by the 10-State plan?

Ms. Coro. I assume they do.

Mr. Weiss. Has that goal been accomplished?

Ms. Coro. Beg pardon, sir?

Mr. Weiss. Has that goal been accomplished requiring that a certain proportion of black faculty and administrators be hired?

Ms. Coro. I don't know for each State. There may have been, some States may have met some of those goals. I would not know if all the States did.

Mr. Weiss. I would appreciate your submitting that information.

Ms. Coro. We will, sir.

[The information follows:]

All nine States and the three institutions in Missouri set goals for hiring black faculty at the doctoral level. None met the goals, although Delaware was one person short of the goal. All nine States and the three institutions in Missouri set goals for hiring black faculty at the non-doctoral level; Georgia and Oklahoma met one numerical goal in that category.

Nine States set goals for hiring black administrators at the doctoral level. Four States (Delaware, Florida, Virginia, and West Virginia) met their goals in that category; Arkansas was one person short of meeting its goal. All nine States set goals for hiring black administrators at the non-doctoral level. Six States (Delaware, Florida, Georgia, Oklahoma, Virginia, and West Virginia) met at least one goal in that category. Three institutions in Missouri did not set employment goals for administrators.

Mr. **Weiss**. Does the criteria require that the States commit to certain measures to accomplish the numerical goals?

Ms. **Coro**. Yes.

Mr. **Weiss**. Have all the measures agreed to been implemented in all 10 States?

Ms. **Coro**. Well, that's part of our determination. That would be part of our determination, and the factual reports indicate which measures were implemented and which were not.

Mr. **Weiss**. We have been joined by my distinguished colleague from Michigan, Mr. Conyers. I will be pleased at this point to recognize you for whatever questions you have.

Mr. **Conyers**. I'm sorry, Mr. Chairman, that I don't have questions, but I do want to observe the importance of the continuation of the subcommittee's burden from the 99th Congress. This may have been gone over earlier in the earlier Congress, but this is an extremely important subject. It has been litigated. It has been in and out of the courts. We have had the Office for Civil Rights on the Hill.

I can remember some discussions that were nearly incredible on the part of representatives from the Department of Education.

I would like very much to let the chairman know that the importance of this hearing is not unnoticed by members of the Congressional Black Caucus for whom this subject has a very, very particular relevancy as well as many other Members of the Congress, and the energies of staff and the chairman in pursuing this matter has been one of almost historic proportions. It is very important that we continue to do this.

Now may I just determine in terms of the procedure that is going on here, are all of these questions that are being asked going to be responded to either in person or in terms of another trip by the distinguished witness, Ms. Coro?

Mr. **Weiss**. To the best of our ability, that is, the witness' and ours, we are trying to get as many of the answers on the record at this time.

In those instances where the factual information is not readily available to the witness, we are providing the opportunity for those responses to be submitted in writing for the record.

Mr. **Conyers**. Well, in the brief time I have been here, there seem to be quite a few of those type responses for the record, and I know that the chairman is very fastidious about these; these commitments to follow up are not lightly taken by the subcommittee.

We would like to get these responses in. I need to know the answers to these important questions being formulated by the Chair, and I would like to join whatever resources and energy we have to continue to get to the bottom of this. We have got some dramatically perilous statistics coming up about the difficulty of blacks getting into higher education, staying in higher education. The numbers are going down almost uniformly, north and south.

The civil rights and the college organizations that are trying to raise funds to sustain blacks at the university level are all up against a wall. The professional college entries are all on the decline. This is an incredible circumstance, and this subcommittee has in a very important way undertaken to examine how the Government, particularly the civil rights branch of Education can repair this. This is not only absolutely reasonable, but it is an absolutely necessary exercise of our jurisdiction, and I think that it is very important to communicate to the chairman that all of the staff are concerned about this.

Mr. WEISS. I thank you very much, Mr. Conyers. The fact is that all of us need to be reminded on a regular basis that the purpose of the underlying legislation, the statutory framework that was adopted by the Congress, was in fact to make sure that people's rights to education were not impaired or blocked because of discriminatory practices.

They for the most part were focusing on race, although one of our witnesses spoke about discriminatory practices regarding women. I think the great frustration that all of us have is that after some 17 years since the first actions were taken because at that time it was felt that the States, colleges and universities within the States were not doing what was required to really open up educational opportunities, that we still have the *Adams* case hanging fire, and there is a great concern when the Federal Government's laws are not self-executing in most instances. You people hold very important positions.

Ms. CORO. I realize that.

Mr. WEISS. Without your activity, the law becomes not only a dead letter, but it becomes a mockery, and so we take this very, very seriously. The witnesses we have had here have spent significant portions of their adult lives trying to secure rights for individuals, but very often the very individuals whom they are originally concerned about have long since passed the time when they can be benefited. They are now concerned about other young people, other students, and so we ask these questions because we are concerned that sometimes the focus seems to be on how many problems the States and the universities have rather than on the terrible problems that are being forced on individuals whose rights are being denied in this instance. So, I welcome your comments, and I know that Ms. Coro will provide us the information we have sought.

Let me continue, if I may, with some additional questions. We are coming to the close at this point.

On February 11, 1985, former Assistant Secretary for Civil Rights, Harry Singleton, sent a memorandum to all OCR regions. The memorandum ordered OCR regions to shift their emphasis from the achievement of goals to the implementation of measures to accomplish the goals.

Is this still OCR's position, that it will evaluate desegregation efforts in the States based on measures and not the achievement of the goals outlined in the court-ordered criteria?

Ms. CORO. Whatever policy stated there is still in effect. I have not changed that policy.

Mr. WEISS. In the area of higher education desegregation, what law or Federal court decision gives OCR the authority to measure the discrimination solely on the basis of the implementation of measures designed to eliminate discrimination, regardless of the success of the measures?

What law or Federal court decision can you point to which gives your office the right to make the determination on the basis of measures and implementation of measures rather than achievement of the goals?

Ms. **Coro.** What court order you say?

Mr. **Weiss.** On what basis do you justify that policy which was adopted by your predecessor? We know of no court decision, we know of no law which allows you, that is, the Office for Civil Rights, of the Department of Education, to adopt that changed policy. It was a change in policy. It was a clear shift. Up to that point, it was achievement of goals. All of a sudden, Mr. Singleton says no to goals. All we are going to judge you by is implementation of measures to achieve those goals. I know of no basis for having come to that new policy, and I wish that you would take a very hard look at it and not feel bound by your predecessor who left the office I think with less than the most glorious exits.

Ms. **Coro.** I will take a look at that, sir.

Mr. **Weiss.** Now, there are precedents it seems to me you ought to be looking at. The recent *Geier* decision we spoke about is one. Also the *Adams* court approved of and ordered criteria which everyone involved agreed should be the basis for goals. I hope that the administration will adhere to the requirements established by law and by court precedent rather than on the basis of Mr. Singleton's philosophy.

OCR's own onsite evaluations of schools covered by the desegregation plans show that in most schools reviewed, there is no analysis of statistics to determine if the numerical goals in the plans had been met.

How will you be able to make a final determination on compliance with title VI without knowing the factual situation at each school in each of the 10 States under review?

Ms. **Coro.** Well, how are we going to—we don't know. We have not made that determination on how we are going to determine whether they are in compliance. We have not made those decisions, but I want to read again from the criteria which were never approved by the court, which says, "These goals are not quotas," so we are not going to base the determination on quotas, and that is part of the criteria.

Mr. **Weiss.** Well, they are not quotas, and everybody agrees they are not quotas. They are goals.

Ms. **Coro.** It says here, "Failure to achieve a goal is not sufficient evidence standing alone," and I am quoting from the criteria which were published in 1978. That was under the Carter administration.

Mr. **Weiss.** Yes, but you have a situation where suddenly the goals have been tossed out all together.

Ms. **Coro.** I have not said that.

Mr. **Weiss.** Well, but that is what Mr. Singleton's policy is. From a position where the decision on violations was not to be determined simply on the basis of the achievement of the numerical goals, but would be considered among a number of factors, right?

Ms. **Coro.** We should look at the entire picture.

Mr. **Weiss.** Now along comes Mr. Singleton's philosophy and policy, which you then follow, which says that we are not going to go with achievement of goals at all.

Ms. Coro. We are going to look at everything. You are trying to make me say whether we are going to look only at numbers, and I can say categorically that we will not look at numbers only.

Mr. Weiss. I want you to look at numbers. I don't want you to look at numbers only, but I do want you to look at numbers.

What I am saying is that there is apparently no analysis of statistics to determine if numerical goals in the plans have been met, so how can you even consider that as one of the factors if you are not preparing a statistical workup for it?

Ms. Coro. Wait a minute. The statistics are all in their reports. We have not done away with statistics. All the reports have factual numbers. They are there. We have not done away with any numbers. They are part of the report.

Mr. Weiss. The onsite reviews for the State of Georgia, for example, have no mention of goals, no corroboration of information provided during interviews in the schools.

Now how can you judge the discrimination in the State without such information?

Ms. Coro. Mr. Chairman, I said earlier that part of the process was to look at the regional reports and then consolidate all that information, check again with the regional staff, and put all that into a consolidated summary of information by the task force. That is what the task force did, and you received all those materials from us.

I was very concerned about the process, very concerned that we had to put all that in some fashion so people could read it. We had pages all over the place from years and years of collecting these reports. I was very concerned about it, putting this information in some fashion so people could look at. Now we have those reports. They have been sent back to the States, but that was the responsibility of the task force, to put together, to collate all that information, review it all, and make it readable in some kind of a report. That's what they did.

Mr. Weiss. Well, I have no further questions prepared for you. I hope that you will submit the responses to the questions that you did not have the information for during the course of this hearing. Again, I hope that you understand that the old adage justice delayed is justice denied applies in these cases, and these cases have dragged for far too long, and this is now 1987, and the vestiges of discrimination, of de jure discriminatory systems still are with us, and it is your job to take significant steps to try to eliminate them, and that is really what we are talking about.

Ms. Coro. Yes, sir.

Mr. Weiss. Thank you very much for your patience in responding to our questions.

We will now take a break until about 2:45, and the subcommittee then will resume with the final witnesses of the day.

[Whereupon, at 2:04 p.m., the subcommittee recessed, to reconvene at 2:45 p.m. the same day.]

Mr. Weiss. The subcommittee is now back in session. Our next witness is Mr. Rance O'Quinn, who is a specialist for the Office for Civil Rights in region I, and Mr. O'Quinn, you are being accompanied by?

Ms. Adams-Choate. Sandra Choate; I am an attorney with the American Federation of Government Employees.

Mr. Weiss. And we welcome both of you. Do you expect to be testifying, responding to any questions?

Ms. Adams-Choate. I will be happy to, but no, I don't expect to.

Mr. Weiss. OK. If that occasion arises, we will be asking you to be sworn. As of now, it is not necessary.

Mr. O'Quinn, would you please stand and raise your right hand?

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Mr. O'Quinn. I do. Mr. Chairman, I did not prepare a statement. I will be testifying based on my knowledge of the practices that occurred in region I, how those things, how the backdating was discovered from a different perspective than what we heard earlier.

Mr. Weiss. All right now. Do you have prepared remarks, a statement that you would like to make, or do you want us to go directly to questions?

Mr. O'Quinn. I would like to go directly to questions.

Mr. Weiss. Would you please pull the microphone closer to yourself? It is not as sensitive as it ought to be, so we don't pick you up unless you really are right on top of it.

Now please tell us what your position is in the region I, Office for Civil Rights?

STATEMENT OF RANCE O'QUINN, EQUAL OPPORTUNITY SPECIALIST, OFFICE FOR CIVIL RIGHTS, REGION I, U.S. DEPARTMENT OF EDUCATION, ACCOMPANIED BY SANDRA S. ADAMS-CHOATE, LEGISLATIVE ATTORNEY, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. O'Quinn. I am an equal opportunity specialist.

Mr. Weiss. What are your responsibilities as equal opportunity specialist?

Mr. O'Quinn. My responsibilities are to investigate complaints in compliance reviews alleging unlawful discrimination, and to provide technical assistance to carry out administrative responsibilities covered by my position.

Mr. Weiss. How long have you held your position?

Mr. O'Quinn. Since September 1980.

Mr. Weiss. You are also a Department of Education union official?

Mr. O'Quinn. Yes, sir.

Mr. Weiss. What are your union responsibilities?

Mr. O'Quinn. I am president of AFG Local 3893, and I am national steward for the Department of Education Council of Locals 52.

Mr. Weiss. Did you receive complaints from other OCR employees about their supervisors backdating letters of finding to make them appear in compliance with the *Adams* timeframe requirements?

Mr. O'Quinn. Yes. Well, let me put it in perspective as to how we came upon the information.

Following the 1985 performance appraisal year, we had a number of employees whose performance ratings had been lower than they had been the previous year. Many of these employees that the division director—these were employees in the elementary and secondary education division—had lowered their ratings notwithstanding the fact that they had met many of the *Adams* timeframes.

We took grievances from these individuals and in the process of going through these various steps in the grievance process, up to preparing for arbitration, once we got to the level of preparing for arbitration is when we began to notice that there was a common element among most of the grievances, and that was that the employee would say well, but that case shows on the record as meeting the *Adams* timeframe, and we would ask how did it meet it, and invariably some of the employees would say well, it was backdated, so that's how we came upon the information that, the initial information that backdating was occurring.

Mr. WEISS. Were you told about the supervisors themselves as far as their ratings were concerned?

Mr. O'QUINN. OK. Well, it was a concern of many of the employees that they were being given "failure to meet internal timeframes"—internal timeframes are timeframes that are less than the average *Adams* timeframes. They are used as benchmarks for measurement for performance purposes. They were failing to meet the internal timeframes, but yet they felt it was unfair that the supervisors who had control over many of these cases that they were working on were backdating them and meeting their timeframes, so they were concerned about the unfairness of the process.

Mr. WEISS. Now what hinged on these performance ratings? What was the consequence or the benefit of having not met the deadlines or having met the deadlines?

Mr. O'QUINN. OK. Well, a failure to meet a performance element in a critical element could result in a minimally, well, an unsatisfactory rating, or it could result in a minimally satisfactory rating.

The adverse effect on employees is that with an unsatisfactory rating, they could be subject to dismissal if they could not bring the performance to a level of acceptance. With a minimally satisfactory rating, these people were denied within-grade increases.

Mr. WEISS. So that it was a matter of dollars and cents?

Mr. O'QUINN. It was a matter of dollars and cents.

Mr. WEISS. Aside from the complaints that you received from OCR employees, did you have personal knowledge of documents that were backdated?

Mr. O'QUINN. I had personal knowledge of one case that was backdated.

Mr. WEISS. Tell us about it.

Mr. O'QUINN. OK. This was a case that had been assigned to me. The employee that was originally assigned the complaint left the Department. He was one of the employees who had also grieved and was one of the employees who had, in previous years, always received an outstanding rating.

My responsibility at that point was to prepare a letter of finding. I prepared a letter of finding. The practice in region I has always been that letters of finding go out at the last minute, or that there is a flurry of activity at the last minute to try to get the letter out on the *Adams* date or somewhere thereabouts, and in this particular case, I had completed what I was required to do prior to the time that it should have gone out.

The following day I reported to work and inquired if the letter had gone out. My supervisor stated that there had been a minor problem with the letter and it had to be retyped, but that we were going to send it out that morning.

I asked him if, well, what was the procedure? I said we have missed the *Adams* due date, so he said well, let me go and check with Mr. Seminini, who was the division director, and I will tell you what we should do, so he came back and he told me Lou said—that is Mr. Seminini—that we are going to put the sixth on this, on the letter of finding.

I reminded him that the date was actually the seventh, so he said well, let me go back and check again. He came back and he said we are putting the sixth on it, and if you put the sixth, all of us will sign it for the sixth, and Frank, meaning Frank Bouche, would sign it and it would go out the sixth, dated the sixth.

I again reminded him, and he said well, Lou is directing you to do it. At that point, I did sign it.

Mr. WEISS. Do you remember the name of that case?

Mr. O'QUINN. The name of that case was *DeMello* v. *Greater New Bedford Vocational Regional Technical School.*

Mr. WEISS. Now did OCR managers also instruct you to contact witnesses and persuade them to withdraw complaints to prevent cases from exceeding the *Adams* deadlines?

Mr. O'QUINN. That happened with me on one occasion. Some history on that case—the case had been assigned to me as an investigator to conduct early complaint resolution. We call it ECR.

I had successfully resolved the complaint through mediation. Our investigative procedures manual required that when an individual is involved with a complaint and an ECR, he or she cannot be the investigator in that same complaint should the resolution fail.

Well, within a month or two of having successfully mediated the complaint, there was a breakdown in the process. The complainant filed a new complaint. The complaint was assigned to me. I immediately told my supervisor that I should not be assigned the case. He notified the division director, Mr. Seminini, who said that he was assigning the case to me anyway.

I raised the issue with Mr. Seminini personally, informing him that the investigative procedures manual did not indicate that I should investigate that complaint. I later raised it with our chief civil rights attorney, Loa Bliss. I was informed by Ms. Bliss that this was an internal program matter and that the program division should resolve the issue of the case assignment.

I proceeded with the case to develop an investigative plan. At the point of getting an investigative plan completed, we were getting into, getting far along in the process, so much so that if we had, it would appear that if we had to do a full-fledged investigation of that complaint, we were going to have some *Adams* problems.

Some time later on, I was told by my supervisor that Mr. Seminini wanted us to contact the complainant and see if she was interested in withdrawing her complaint. Part of that was based on the fact that when the complaint came in, the complainant complained and moved out of the school district, so we had some questions about whether or not the complainant really had standing since she had moved out of the school district and whether or not there could be any remedy to the complainant even if we were to find in her favor.

Well, because of the time crunch, I began to be pressured to get in touch with the complainant and see if we can get a withdrawal. I objected to that process. I again raised the issue that I should not have been involved in the case, but Mr. Seminini insisted that I was going to pursue the case, and that the only way that he would remove the case from me is if the superintendent of schools raised some objection.

Well, the superintendent of schools had raised some objections not about my being assigned to the case, but about the fact that OCR had accepted the complaint in the first place, so it was never really responded, that issue was never responded to.

I was continued to be pressured to get a withdrawal. Finally, my superintendent told me that he was directing me to contact the complainant. I contacted the complainant. The complainant said that she felt that we had been helpful to her in getting her child into another school at what she felt was an appropriate grade level, and all of that was a result of the earlier complaint resolution process, and that she really didn't have, she didn't intend to be involved with our school district, and she didn't mind withdrawing the complaint, and that was how that process went.

Mr. WEISS. Tell me again, because I missed it at the beginning. Why did you suggest you should not have that case assigned to you?

Mr. O'QUINN. Because the OCR has an investigative procedures manual, and in the manual it states that employees who handle the mediation should not be the employee that will investigate the case.

Mr. WEISS. OK. Now were other staff instructed to persuade complainants to withdraw allegations to meet the court-ordered due dates?

Mr. O'QUINN. Well, during the course of my inquiry when we began to get the information about backdating, the union made a survey of employees in the elementary and secondary, postsecondary and PRIMS divisions about backdating, whether or not they had information about backdating. Some employees had indicated to me that they had information, but they were fearful of coming forward with the information because they felt they would be retaliated against or that there may be some reprisal, so they felt uncomfortable in bringing the information forward.

We had earlier apprised the Department's Labor Relations Division that we had some information about backdating, and it affected the outcome of the ratings on these individuals.

Well, I don't think any of us took it as serious as it probably should have been, but we raised the issue with the Labor Relations people because we were trying to either get settlement of the grievances or trying to redress the grievances based on the fact that management had falsified information but had given these employees poor ratings based upon false information.

We didn't get anywhere with that. During the meeting in Washington with Mr. Mines on some other complaints that we were trying to resolve, I made mention to him that we had uncovered some information concerning backdating, and his statement to me was if you have evidence of that sort, I won't have a problem dealing with the responsible people. Well, that was the extent that we went with the information.

We went back, and then we did our survey to find out how extensive it was, and we found out that a number of employees were willing to come forward and tell the union that their cases had been backdated. They identified the cases that had been backdated. They told us the *Adams* due date, the date that they signed, that it was signed, and the dates that the letters actually went out.

Mr. **Weiss**. When was that original conversation with Mr. Mines?

Mr. **O'Quinn**. It had to be in early June.

Mr. **Weiss**. Of?

Mr. **O'Quinn**. Of 1986.

Mr. **Weiss**. Then after you developed all this information, after your conversation with him, what happened? What did you do with that information?

Mr. **O'Quinn**. I didn't get back to Mr. Mines. Based on the information I received from other employees about IG investigations and how they were handled, we decided that we would provide the information to the inspector general rather than to provide it to OCR, the actual cases.

Mr. **Weiss**. When did you provide the information to the inspector general?

Mr. **O'Quinn**. I believe it was on or about June 17. We notified the IG through the hot line that we had information concerning backdating. We identified a number of cases and a number of employees who could provide information concerning those cases.

Mr. **Weiss**. Now did your managers take any kind of retaliatory action against you because you contacted the inspector general?

Mr. **O'Quinn**. Well, the first action was on or about July 21. I was contacted by Loa Bliss, who was the acting regional director. I was at the union office. She called me on the telephone, and she inquired if I had made a complaint to the inspector general. No. She asked, her specific question was do you have any written information on the information you provided to the inspector general?

My response was I have no written information on anything that I will apprise the inspector general. Then she asked me did you make a complaint to the inspector general? And I inquired why would she question me on that? And she said she had good reasons to believe that I had provided the information to the inspector general.

I asked her where did she get her information? And she said she would not tell me the source, but that she had received information that I had provided that information.

Mr. **Weiss**. What was the date of that conversation?

Mr. **O'Quinn**. That was July 21. July 21 had to be the date when the—when we reported to work and the—all of the files had been removed from the office by the inspector general. That was the same day, and there was a lot of flurry of activity going on in the office because a lot of people didn't know what was going on, didn't know that an investigation had commenced, and there was just a lot of general confusion as to what was going on.

On the following day, well, I had a very disturbed night. The following day, I went in to see Ms. Bliss to inquire why would she be concerned about any complaint to the inspector general, especially when such complaints were supposed to be confidential, and whether or not she had information from the inspector general that I had provided information.

She said well, I just wanted to make sure that if you provided the information, that they should be talking to you. I said well, I'm sure that if I had provided information, they would be talking to me.

I then inquired about who she had received information from, that it was I who had provided the inspector general. She again refused to tell me, but it was generally rumored around the office and I had been told from time to time by Mr. Seminini that he intended to get my dismissal or to fire me.

In a previous year I had been given an unsatisfactory rating. It went to arbitration. We won the arbitration. It was appealed to the Federal labor relations authority. The Department lost at that level, and they were ordered to go back and give me a rating for 1984. They still had not given me a rating, so that attempt to give me an unsatisfactory rating was unsuccessful.

I had reason to believe that they would attempt to do that again because Mr. Seminini had made it known that he was going to terminate me, and during, well, during this period of time we had an interim or another acting regional director, a Mr. Fred Chauffey. I met with Mr. Chauffey on many occasions, and on many occasions we talked about things that were going on in the office, and he was particularly concerned about the high number of grievances that had gone on, been on file in region I.

We had also had a number of employment discrimination charges filed against individuals alleging discrimination against employees because of their race and their national origin. These were black and Hispanic employees who were concerned, well, who had filed these grievances because they felt they were being discriminated against.

In the course of my dealings with Mr. Chauffey, who I found to be a very fair and competent individual, the level of grievances went down, but it was feared that, I feared that there would be some retribution, and subsequently I was given another unsatisfactory rating.

When I went to Mr. Chauffey about it and requested to be removed from Mr. Seminini's supervision, his question to me I believe was why didn't you ask for this sooner? And I said I didn't feel the need to really do it until I was under his direct supervision. We had lost a branch chief and I was directly under his supervision and I felt I wanted to put some distance between Mr. Seminini and myself in the event I had to fight the rating that he had given me.

Mr. Chauffey immediately transferred me to another division.

Mr. **Weiss**. Now do you know if other staff had been instructed to persuade complainants to withdraw allegations to meet the court-ordered due dates?

Mr. **O'Quinn**. I only know of that one, one other case. It is my understanding from that particular employee that Mr. Seminini—

she, that employee was encouraged to do it in one case I think and to initiate it in another, but Mr. Seminini followed through and actually got the withdrawals on the case involving an organization in Connecticut.

Mr. WEISS. Are you aware of backdating occurring in regions other than the eastern one?

Mr. O'QUINN. Well, after having discovered that it was in region I, the council instructed me to, as a national steward, to survey the other regions, and several of our regional presidents indicated that they had some information that backdating was occurring in OCR in their regions.

Mr. WEISS. Now when you spoke with Mr. Mines, how is it that you had sought him out? How did you choose him as the person to have a conversation with?

Mr. O'QUINN. Well, we had met with Mr. Mines. We had filed a national grievance, two national grievances. One of them dealt with the timeframes, and the other dealt with OCR attempting to impose stricter internal timeframes in the general performance appraisal plan. We met with him in an attempt to try and work out a resolution of those two national grievances.

It was following that meeting, at the conclusion of that meeting that I made mention that I had some information that backdating was occurring in region I.

Mr. WEISS. Now when you told him that, did he tell you that anyone who was caught backdating would be fired?

Mr. O'QUINN. Yes, he did.

Mr. WEISS. Now prior to initiation of the inspector general's investigation, did you hear from Mr. Mines or anyone else at the central office in reference to backdating of documents?

Mr. O'QUINN. No, I did not.

Mr. WEISS. Are there any other problems you know of in OCR that you think should be brought to the subcommittee's attention today?

Mr. O'QUINN. Well, one other problem that we have had and continue to have is the time lines for investigating complaints.

If I recall correctly, Mrs. Coro made mention that the union is on record asking that the *Adams* timeframes be changed.

I think the union has some problem with that on two levels, not just—we felt that if the Department cannot meet the *Adams* timeframes, then the Department should go to the *Adams* court and seek a modification of the order because what is happening across the country is that employees are finding it extremely difficult to meet the internal timeframes that they have in order to meet the *Adams* timeframes. We were looking at that on two levels.

The second level was that if the *Adams* timeframes cannot be modified, then that the union should be allowed to intervene on behalf of the investigators to seek some better arrangement, arrangement or accommodation for the time period that we have to investigate the complaints in. We were talking about in some cases going from 80 days or 90 days in which to meet the timeframe to 65 days for the, for the investigators. In region I we had about 90 days in which to complete those investigations, and that allowed for a period of review by the people above the investigators.

The 65 days meant if we were to count the 15 days that the case was in print, then we are talking roughly 50 days in which to complete an investigation. We felt that we wanted more say-so in the arrangement of the time for the internal timeframes. That was—we would see fewer people missing the internal, but certainly they would work much harder to meet the *Adams*, so these were our concerns.

Mr. **Weiss**. What was the difference in the time between the internal timeframes and the *Adams* court timeframes?

Mr. **O'Quinn**. Well, in region I they were 90 and the *Adams* timeframe was 105, so we are talking roughly 15 days, 15 additional days, but by restricting them down to 65 days for the investigation, and we were having problems in meeting the 90 days, and I think that's a universal problem with OCR.

I think one of the things that causes some of the managers—because I have heard it personally—say that they have a requirement to meet the *Adams* timeframe 100 percent. Therefore, anyone causing them to miss an *Adams* timeframe was going to get it. I was told that personally, and I saw the result of people missing the internal and missing the *Adams*, but later to have the *Adams* backdated.

Mr. **Weiss**. Thank you very much, Mr. O'Quinn. Is there anything else you want to add?

Mr. **O'Quinn**. I would just like to add one other point.

I had heard about the internal investigation that OCR did when they looked at those cases. When the review team came to region I, I approached a member of that review team and requested to meet with the team that was investigating the backdating. That member of that team got back to me the following day and stated to me no, they could not meet with me to discuss or to receive information concerning backdating.

I later checked with union officials in other regions when we learned that the team was going to other regions to talk, to find out if the unions had any input in the investigation, and almost to—I don't recall one regional union officer having input in the backdating investigation. There had been some in some other investigations that, OCR internal investigation, that OCR had done, but our information is that the union was not given an opportunity to present any information in any of the backdating inquiries by the Department, by OCR's team.

Mr. **Weiss**. Well, I thank you very much for your testimony, for your patience in waiting until we were able to reach you today, and really for your forthcoming with information in the operation of your office in a timely fashion so that in fact the inspector general could undertake the kind of investigation that was undertaken. We very much appreciate it.

Mr. **O'Quinn**. Thank you.

Mr. **Weiss**. Thank you. Our next panel of witnesses will be Dr. Charles McLeod, who is a faculty advisor for the Virginia Commonwealth University.

Dr. McLeod will be joined by Adell Adams, who is with the National Association for the Advancement of Colored People from Columbia, SC. Ms. Adams is not here at the moment. Dr. McLeod, before you sit down, will you raise your right hand?

Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Dr. **McLeod.** I do.

Mr. **Weiss.** Thank you. Do you have prepared testimony that you submitted to us?

Dr. **McLeod.** I have a document which was prepared by the group of which I am a member that I am offering into evidence. My testimony basically is oral.

Mr. **Weiss.** Fine. Your testimony that has been prepared will be entered into the record, and we will welcome a brief oral presentation from you.

STATEMENT OF DR. CHARLES McLEOD, FACULTY ADVISOR, VIRGINIA COMMONWEALTH UNIVERSITY

Dr. **McLeod.** Thank you very much, Mr. Chairman. I was asked to appear before your committee for two reasons I believe.

First of all, because I am a black faculty member at one of the traditionally white institutions in one of the *Adams* States—Virginia. I am currently serving as director of academic counseling for student athletes at Virginia Commonwealth University in Richmond, VA. Yet, the second reason I presume for my invitation is the fact that I have had some direct and personal experience of my own with the Office for Civil Rights by way of a complaint which I filed on my own behalf a few years back, and am prepared to offer whatever testimony might be helpful to your investigation.

Mr. **Weiss.** Dr. McLeod, the microphone is not very sensitive, so pull it very close to you if you will.

Dr. **McLeod.** OK.

Mr. **Weiss.** It will be easier to hear you.

Dr. **McLeod.** First of all, let me say that black faculty, and I would like to speak certainly on behalf of those in my institution, are very fearful of what the prospects are at this day and time in the Office for Civil Rights relinguishing the responsibility among the States for continued involvement with and enforcement of statewide plans for efforts to desegregate the State system of higher education.

As you can see from the document which I have submitted into testimony for you, the Black Educational Association of Virginia Commonwealth University, of which I happen to be the chairman of its Affirmative Action Committee, submitted to the Office for Civil Rights in the Department of Education an appeal last spring for a minimum of a 5-year extension of the Virginia plan for desegregation in higher ed.

Our interest in submitting such proposal was simply based upon our own review of the data and statistics available at our particular institution wherein we found that certainly what was being purported on the part of the institution and what was actually taking place were quite different. We also found that there appeared to be an extreme lack of sensitivity to or concern for an important dimension of, quote, desegregation at any level, and that is the quality of life for those who end up at whatever institutions they choose to attend or find employment.

The great bulk of OCR's concern appears to be in what we consider to be quite physical kinds of arrangements, that is, statistics in the way of enrollment patterns or in the way of employment patterns. We noted from our own investigation, from our own review of our institution, we found a number of cases where while black students were being enrolled and black faculty may be employed at alternately increasing or decreasing patterns, the sense of acceptance at the institutions as well as the sense of belonging necessary and the sense of comfort, security and safety, simply were not there.

There were several cases where black faculty have been forced to engage in extra-legal or to utilize the courts to communicate with the administration to resolve employment disputes, and these files led to either court suits or complaints to the Office for Civil Rights, faculty grievances or what have you, and there was a sense that the university administration simply was not sympathetic to resolve the complaints or concerns of black faculty in an informal or amicable way short of some formal proceedings. We simply feel that, with some of the other data that is in fact embodied in Virginia's own report, indicating, for example, that the gap in college-going among black high school youngsters, between black high school graduates and those of white high school graduates during the *Adams* period, during the period I believe from 1978, have actually increased rather than decreased. The percentage of blacks and numbers of blacks entering our own institution have decreased. The numbers of blacks overall attending college in the State of Virginia have decreased percentagewise, and certainly as important, the numbers of blacks entering the graduate schools in the State of Virginia have decreased. There has been almost a 50-percent decrease in the numbers of blacks in graduate school at our own institution.

We feel these kinds of numbers simply do not support any contention that our State, if our own institution is an example, as a leader—in one place, the Virginia report indicates or suggests such—there is a level of sufficient progress to warrant either a termination of Federal involvement in overseeing monitoring of the desegregation effort, and so my own interest is really to bring to this committee's attention the fact that we have made an appeal as an entity within the university itself to the Office of Education, to the Office for Civil Rights, and the Department of Education, to continue or to at least extend for a 5-year period Virginia's commitment to the plan for desegregation.

[The documents supporting Dr. McLeod's testimony follow:]

BIOGRAPHICAL SKETCH
FOR
DR. CHARLES LIONEL MCLEOD

Born in Beeville Texas, Dr. Charles McLeod spent much of his early childhood in Virginia and is a product of Virginia Public Schools--having attended public schools in the cities of Hopewell and Petersburg as well as Chesterfield County. Dr. McLeod attended Virginia State University, Virginia Commonwealth University, and the University of Virginia. He holds a Bachelor's Degree in Sociology (1970) and a Masters Degree in Counselor Education (1973) from Virginia Commonwealth University. In 1980 Dr. McLeod received his Doctorate from the University of Virginia in the field of Higher Education Administration. His doctoral dissertation concentrated on factors influencing students' college choice selections.

Dr. McLeod's work experience includes several years in the field of education. He has worked as a college admissions officer, assistant supervisor at the State Department of Education, a community college counselor; Researcher at Virginia Commonwealth University in University Enrollment Services and in the Center for Educational Development and Faculty Resources. He is currently the Director of Academic Counseling for student-athletes at VCU.

He is the author of numerous papers and research studies on higher education. Dr. McLeod has continued to contribute to the improvement of the community through his service on several boards at the state and local level. He has served as a volunteer and consultant to the Dropout Prevention Program of Richmond City Schools.

A former athlete, having excelled in football, basketball and track in high school and having played basketball in college, Dr. McLeod enjoys sports, music, research and he is an avid reader.

Dr. McLeod is married to the former Beatrice Fisher, and he and his wife reside in the Richmond area.

3/86

NEWS RELEASE NEWS RELEASE NEWS RELEASE

BLACK FACULTY AT VCU SCORES LACK OF EQUAL OPPORTUNITY IN VIRGINIA'S INSTITUTIONS OF HIGHER LEARNING AND LAUNCHES CAMPAIGN TO INITIATE A NEW DESEGREGATION PLAN IN 1986

Richmond, Virginia - April 9, 1986

The Black Education Association (BEA), an organization of black faculty, administrators, and counselors at Virginia Commonwealth University (VCU), has presented to the Office for Civil Rights of the U. S. Department of Education, an assessment of non-equal opportunity compliance at VCU. Further, the BEA has asked Virginia Governor, Gerald L. Baliles, to implement a new desegregation plan upon the expiration of the current plan on June 30, 1986. The independent assessment conducted by several committees of the BEA, highlights serious deficiencies in equal opportunity efforts at VCU in the areas of administration, faculty recruitment and retention, and student recruitment and retention.

The report, disseminated to requisite public officers of the Commonwealth, various local and national public administrators and elected officials, and civil rights organizations, charges that VCU officials have engaged in a lackluster approach to promoting equal opportunities for blacks in higher education, and have in fact, retrogressed from original equal opportunity goals. The assessment of implementation and monitoring shows that progress in equal opportunity for blacks in education in state colleges and universities reflect two unreconciled ideologies, one for public declamation, and the other actual practice. Public announcements suggest a highly egalitarian situation in the schools of Virginia while actual situations are based on practices that are grossly exclusionary. Highlights of the report indicate:

☐ No black has ever occupied a position in the central administration of the university.

☐ Office of civil rights reports show that rather than increasing the employment of black faculty, VCU in fact, lost 20 percent of its black faculty during the 1984-85 academic year.

☐ While the number of black students graduating from Virginia's high schools has steadily increased, there has been a concomitant decrease in the number of black students enrolled at VCU.

☐ Disparate treatment of blacks with respect to employment practices has resulted in several grievances and court suits against the university.

The BEA asserts that it has witnessed a history of indifferent compliance and circumvention of affirmative action goals. Shifting criteria, subjective decision processes, pre-selection, appointment by default, and administrative fiat have excluded healthy participation of blacks in the higher education workforce. The disconfirming evidence of adequate equal opportunity efforts show that monitoring reports address specifically resolved complaints rather than overall progress in meeting affirmative action goals. The BEA fears that a counter-reconstruction in higher education will occur if desegregation efforts are discontinued.

Numerous organizations in the community, including religious groups, other public and private educational institutions, business persons, national politicians, and other citizens, have been urged to call upon the governor and ask him to take immediate positive steps to renew the original plan or institute a new one. The BEA also stressed that the viability of education in the Commonwealth is also contingent upon its diversity, and it is for the benefit of all Virginians that desegregation efforts continue. The BEA is continuing its investigation of noncompliance with the Civil Rights Act. BEA is asking the VCU administration to join in its efforts and endorse its appeal to the governor.

BLACK EDUCATION ASSOCIATION
OF
VIRGINIA COMMONWEALTH UNIVERSITY

March 19, 1986

Dewey E. Dodds
Regional Civil Rights Director
Office for Civil Rights
U. S. Department of Education
3535 Market Street
Philadelphia, PA 19101

President
Allen C. Barrett

Vice President
Donna Hatchette

Secretary
Dwight Dixon

Asst. Secretary
Ellen P. Pearson

Treasurer
Mabel G. Wells

Parliamentarian
DeLores T. Taylor

Chaplain
Ruby C. Walker

Dear Mr. Dodds:

This letter is to transmit an appeal from the Black Education Association (BEA) of Virginia Commonwealth University (VCU) to extend the Virginia Plan for Equal Opportunity in State-Supported Institutions of Higher Education (Plan) an additional five years from its scheduled expiration date of June 30, 1986. This is also to transmit the results, conclusions, and implications of a special assessment of the progress in equal opportunity efforts at VCU.

Our assessment is the result of a painstaking review of data relevant to equal opportunity in the areas of administration, faculty retention, and student recruitment and retention. Our report presents convincing evidence that VCU has not lived up to the equal opportunity commitments set forth in the Plan. Continued oversight and enforcement of equal opportunity regulations by an external agency is critical to the viability and diversity which should exist in Virginia's public institutions of higher learning.

Given the poor state of performance at VCU with the plan in effect, we can only shudder or live in extreme discomfort over prospects of likely reversals of equal opportunity progress if the plan were not renewed. Therefore, we strongly urge you to digest the facts and implications of the attached report and move with all deliberate speed to renew the Virginia Plan.

Your consideration will be deeply appreciated.

Sincerely,

Allen C. Barrett

Allen C. Barrett
President

CC: W/attachments

The Honorable Gerald L. Baliles
Governor of Virginia

Dewey E. Dodds
Page 2

CC: W/attachments cont'd.

Mary Sue Terry, Attorney General - Commonwealth of Virginia
Gordon Davies, Director - Council of Higher Education
Phyllis McClure - NAACP Legal Defense Fund
Curtis Harris, President - Southern Christian Leadership Conference
Paul Matthews, President - Virginia NAACP
Florynce Kennedy, Attorney-at-Law
Finley, Secy. of Educ. Va.
Congressional Blk Caucus

BLACK EDUCATION ASSOCIATION
OF VIRGINIA COMMONWEALTH UNIVERSITY

APPEAL TO THE U.S. DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS FOR A FIVE-YEAR EXTENSION OF THE *VIRGINIA PLAN FOR EQUAL OPPORTUNITY IN STATE SUPPORTED INSTITUTIONS OF HIGHER EDUCATION*

INTRODUCTION

The *Virginia Plan for Equal Opportunity in State-Supported Institutions of Higher Education,* as amended in 1983 and in the spring and fall of 1984 (*Amended Plan)* is scheduled to expire on June 30, 1986. Equal opportunity in higher education in the Commonwealth of Virginia is a matter of vital concern to black instructional faculty, administrators, and academic support staff. The Black Education Association (BEA)-- an organization of black faculty, administrators, and counselors-- at Virginia Commonwealth University (VCU) is cited in the *Plan* as one of the organizations at VCU that should be involved in the implementation and monitoring of the *Plan*. *BEA* established several task forces to assess progress toward desegregation in three areas:

1) Equal employment opportunity in the central administrative structure of the university.
2) Equal opportunity with respect to black faculty retention, tenure, and promotion.
3) Affirmative action taken to facilitate recruitment and retention of black students.

This document reports the findings of the task forces.

Based on the assessment of desegregation progress by BEA, it is reasonable to conclude that VCU has fallen far short of the commitments set forth in the *Plan*. Deficiencies outlined in several areas have not been corrected over the entire life of the *Plan*. The independent assessment effort of BEA was necessitated because official progress reports reflect considerable obfuscation. In many areas of equal opportunity, progress has slackened or reversed altogether. While the laudable goal of equal opportunity benefits all citizens, there are legions of tireless opponents to equal opportunity and affirmative action. If progress has been much less than desirable under the *Plan*, it would be considerably less if the *Plan* were allowed to expire. Equal opportunity is now eroding and with the expiration of the *Plan*, desegregation gains made by blacks in higher education would face the prospect of systematic destruction. Previous events and the current poor performance in matters of equal opportunity at VCU provide support for a compelling argument that support for equal educational opportunity would naturally die without continued outside support. Recent trends and current practices in the arena of equal opportunity suggest that another "counter-reconstruction" would be imminent without crucial enforcement measures for holding the line against opponents of equal opportunity in higher education. BEA strongly urges the Office of Civil Rights to extend the plan for another five years from July 1, 1986 through June 30, 1991.

Implications of the Progress Assessment

From an extensive review of progress toward equal opportunity and with respect to administration, faculty, and students, no evidence emerges that either equal opportunity or affirmative action is flourishing at VCU. A serious dichotomy exists between public pronouncements of VCU's efforts to implement the plan and the actual status of equal opportunity for blacks. While BEA views the *Plan* as viable to equal opportunity goals, candid facts suggest that little has changed since the *Plan's* implementation. Monitoring and evaluation of the *Plan* have also been carried out poorly by the university and its officials or persons designated to report on the progress of the *Plan*. The task force findings present a somewhat provocative and unpleasant picture of the status of blacks at VCU.

The actual equal opportunity outcomes at VCU have not been amenable to the techniques and devices used to assess those outcomes:

☐ The model used to assess black student retention did not disaggregate attrition by school, by department, nor by curricula advisor. Further, the model did not undertake sufficient examination of the flow of students through various stages of their student careers. Consequently, there is no indication of factors of personal exchange between faculty and student, which may contribute to the disproportionate attrition of black students. Attrition reports focus primarily on factors such as extended length of time to graduate and termination of student careers due to economic reasons. Thus, realizing the self-fulfilling prophecy that loss of a source of funding aborts student careers.

☐ Failure to disaggregate administrative workers in support operations from administrators in hierarchical structure of the central university administration obfuscates the fact that blacks are totally excluded from the university-wide policy making apparatus. Blacks have served and are currently serving as Chancellors, Presidents, and Vice Presidents at major universities throughout the United States. However, at VCU, no black has ever served in the central administration. From the standpoint of policy formulation and enforcement of equal opportunity regulations, this stark fact suggests a weak commitment to equal opportunity and affirmative action goals. A fuller argument, considering recent events that eliminated a viable black candidate from consideration for the post of Provost and Vice President for Academic Affairs and systematically preventing blacks from attaining other posts, would suggest a conscious policy of "affirmative discrimination." In any event, the fact that no black has ever occupied a post in the central administration can be construed as prima facie evidence that VCU has been less than wholehearted in providing equal employment opportunity for blacks or in promoting affirmative action goals in some of the most sensitive posts in the university. The university has yet to make a clear statement about equal employment opportunity in its administrative ranks.

□ In terms of faculty retention, VCU's efforts have been far less than enthusiastic. A critical shortage of black faculty exists in various schools and departments across the university--despite the fact that these schools and departments reflect significant black student enrollment. It is ironic and frustrating to black faculty that VCU has not found it a priority to employ even one black professor in the school of business and that a white professor acts as head of Afro-American studies while eminently qualified blacks have been rejected for the same position because they have been tenured elsewhere--although precedent exists for bringing tenured Associate Professors. The actual picture of faculty retention has been so poor that OCR cited VCU for its high turnover of black faculty. Further, out of 226 Full Professors, only seven (7) are black. It is noted that four of these were promoted since a discrimination case was instituted in Federal Court by another black seeking promotion to the Rank of Full Preofessor. (Two of these four were brought in as Full Professors and two were promoted internally). At the conclusion of the reporting period, there were only three black Full Professors. No blacks have been granted tenure since the 1981-82 academic year. This factor certainly helps to erode opportunities for mentoring relationships so vital to the development of junior black faculty. From this summary of facts pertaining to black faculty, one could hardly conclude that a favorable climate of equal opportunity exists for black faculty at VCU.

The thoughts, observations, and materials appended to this memorandum graphically portray poignant disclosures of the extremely poor state of equal opportunity at VCU. One of the most critical factors emerging from this report is the flux of impressions and cogent images among black faculty that VCU has a less than lukewarm commitment to equal opportunity for blacks in its academic community. Black perceptions of a less than adequate effort to promote fairness and equal opportunity are supplemented by straightforward statistical evidence and nonspurious interpretations of data regarding desegregation progress.

APPENDIX ONE

ASSESSMENT OF EQUAL OPPORTUNITY IN THE ADMINISTRATIVE STRUCTURE OF VIRGINIA COMMONWEALTH UNIVERSITY

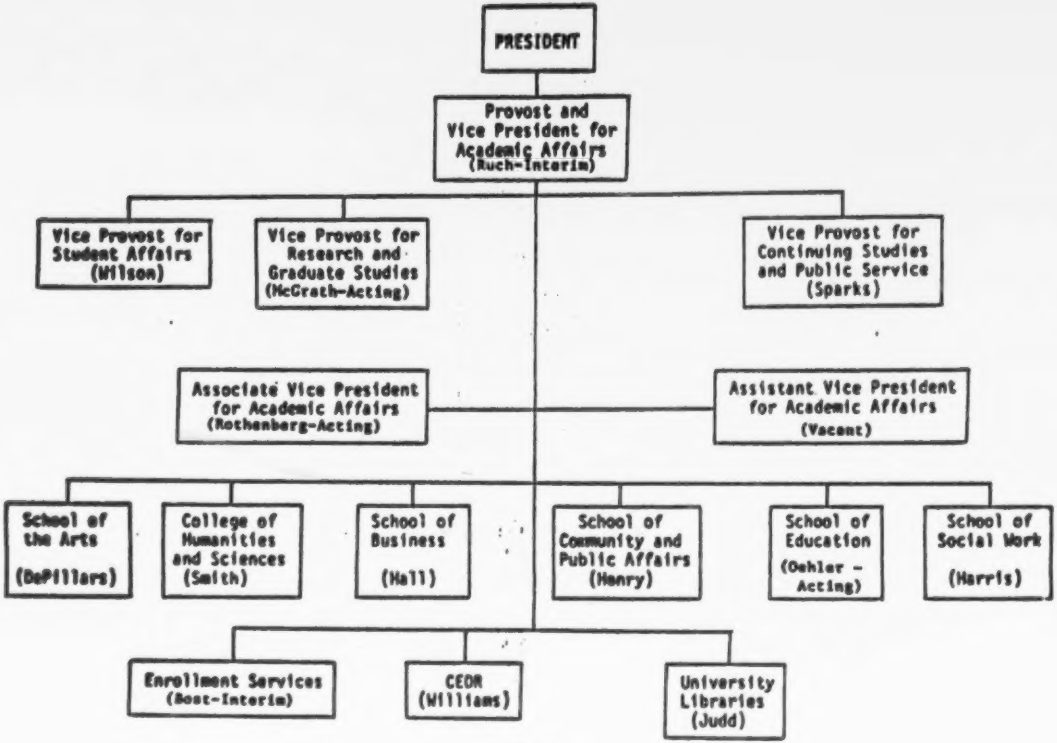
VCU ADMINISTRATION VIS-A-VIS BLACKS
March 1986

A review of central administrative positions at Virginia Commonwealth University reveals the fact that there are no black persons employed in the 17 top level echelon administrative positions i.e. president, provost, vice provost, senior vice president, associate vice-presidents, assistant vice presidents, Assistant to the President (Legislative Relations), Legal Advisor (to the President and Board of Visitors). The history of this top-level echelon of VCU administration is that in the nearly 20 year history of VCU no blacks have ever occupied any of these high level positions. Among the 45 individuals at the second administrative echelon of academic dean, associate and assistant deans only 2 blacks are employed. At the third echelon of administrators (University Services)-Director, associate and assistant directors-among 36 individuals in such positions, 1 is black. At the fourth level of administration (Campus Services) among 30 individuals identified as Deans, Assistant Deans, Directors, assistant directors or coordinators, 8 are black. So that, most of the blacks employed in administrative positions are at the lowest level with none at the highest level. Several high level administrative positions are currently vacant or held by whites in acting appointments. i.e. Provost and Vice President for Academic Affairs, Associate Vice-President for Academic Affairs, Assistant Vice President for Academic Affairs (Vacant), Vice Provost for Research and Graduate Studies, Executive Director of Enrollment Services, Director of Admissions, etc. This absence of meaningful black participation at the top rungs of the administrative hierarchy has created a protracted sense of powerlessness among black faculty, staff and students. Also, such gives the impression that the top Administration is not seriously committed to affirmative action and that blacks are not truly valued as contributors to the overall organization and control of the University. Relatedly, several blacks have recently been forced to use the courts, civil rights agencies, internal grievance mechanisms, and/or personal letters of protest to address concerns due to what appears to be an unwillingness of top level VCU administrators to attempt to resolve concerns of black faculty/staff informally.

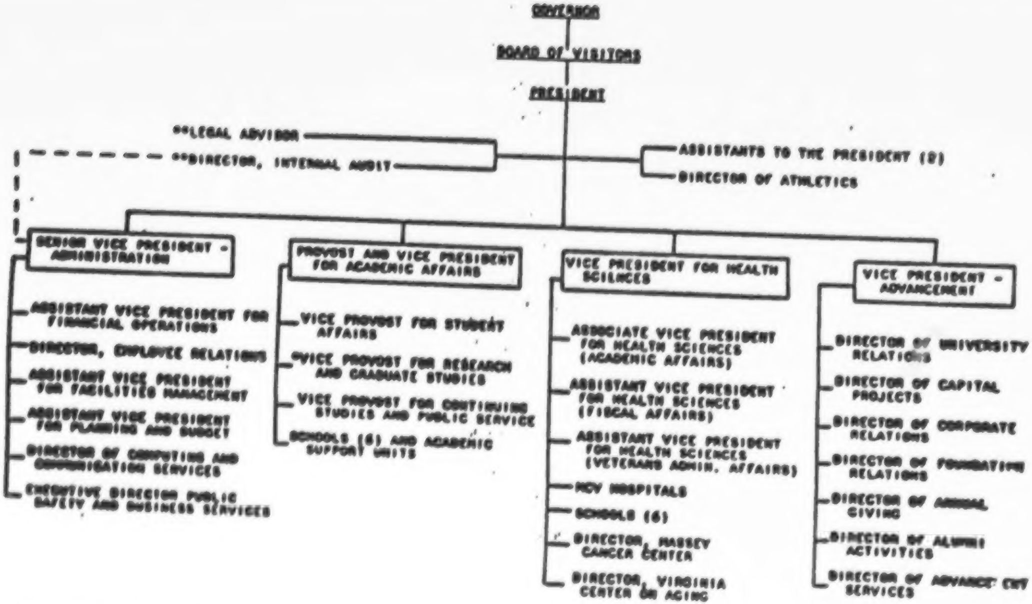
Black males have been particularly vunerable to the wrath of VCU administrators with respect to non-renewal of employment contracts as well as harassment and intimidation by the VCU police department. There is a strong sense of detachment which black students/faculty/staff at VCU and Blacks in the Richmond community feel toward VCU. The institution, in fact, has recognized this lack of "hospitality" of VCU for nonmajority members in its January 28th 1985 quarterly report to the Office for Civil Rights (OCR). Although VCU also acknowledged the need to sensitize the university community to relationships between racism, power, status, roles and attitudes, no university-wide program has been put in place to address this issue. Certain administrative positions are viewed as vehicles for control and intimidation of blacks at VCU as well as vehicles for stiffling black complaints. In fact, there is a sense of intimidation by some black faculty, staff and students because of a tendency to isolate and brand blacks who raise racial issues at the university. The university response is, typically, to ostracize the black individual raising the concern, while simultaneously rewarding a few "non-complaining" blacks to diffuse the issue and to camouflage a continued general policy of discrimination toward blacks.

In short, VCU University administrators have not taken sufficient efforts to either hire blacks in faculty or administrative positions (particulary in the "high-level" posts) or to make the university a more wholesome environment in which black students, faculty, staff, administrators or blacks in the surrounding community can feel comfortable.

VCU efforts, to date, regarding Affirmative Action and so-called committments to equal opportunity (for blacks) are viewed by many blacks as, simply, a smoke screen for continued discrimination in higher education.


PRESIDENT
Provost and Vice President for Academic Affairs (Ruch-Interim)
Vice Provost for Student Affairs (Wilson)
Vice Provost for Research and Graduate Studies (McGrath-Acting)
Vice Provost for Continuing Studies and Public Service (Sparks)
Associate Vice President for Academic Affairs (Rothenberg-Acting)
Assistant Vice President for Academic Affairs (Vacant)
School of the Arts (DePillars)
College of Humanities and Sciences (Smith)
School of Business (Hall)
School of Community and Public Affairs (Henry)
School of Education (Oehler - Acting)
School of Social Work (Harris)
Enrollment Services (Bost-Interim)
CEDR (Williams)
University Libraries (Judd)

July 1983


GOVERNOR
BOARD OF VISITORS
PRESIDENT
**LEGAL ADVISOR
**DIRECTOR, INTERNAL AUDIT
ASSISTANTS TO THE PRESIDENT (2)
DIRECTOR OF ATHLETICS
SENIOR VICE PRESIDENT - ADMINISTRATION
ASSISTANT VICE PRESIDENT FOR FINANCIAL OPERATIONS
DIRECTOR, EMPLOYEE RELATIONS
ASSISTANT VICE PRESIDENT FOR FACILITIES MANAGEMENT
ASSISTANT VICE PRESIDENT FOR PLANNING AND BUDGET
DIRECTOR OF COMPUTING AND COMMUNICATION SERVICES
EXECUTIVE DIRECTOR PUBLIC SAFETY AND BUSINESS SERVICES
PROVOST AND VICE PRESIDENT FOR ACADEMIC AFFAIRS
VICE PROVOST FOR STUDENT AFFAIRS
*VICE PROVOST FOR RESEARCH AND GRADUATE STUDIES
VICE PROVOST FOR CONTINUING STUDIES AND PUBLIC SERVICE
SCHOOLS (6) AND ACADEMIC SUPPORT UNITS
VICE PRESIDENT FOR HEALTH SCIENCES
ASSOCIATE VICE PRESIDENT FOR HEALTH SCIENCES (ACADEMIC AFFAIRS)
ASSISTANT VICE PRESIDENT FOR HEALTH SCIENCES (FISCAL AFFAIRS)
ASSISTANT VICE PRESIDENT FOR HEALTH SCIENCES (VETERANS ADMIN. AFFAIRS)
MCV HOSPITALS
SCHOOLS (6)
DIRECTOR, MASSEY CANCER CENTER
DIRECTOR, VIRGINIA CENTER ON AGING
VICE PRESIDENT - ADVANCEMENT
DIRECTOR OF UNIVERSITY RELATIONS
DIRECTOR OF CAPITAL PROJECTS
DIRECTOR OF CORPORATE RELATIONS
DIRECTOR OF FOUNDATION RELATIONS
DIRECTOR OF ANNUAL GIVING
DIRECTOR OF ALUMNI ACTIVITIES
DIRECTOR OF ADVANCEMENT SERVICES

*Research and Graduate Studies organization being reviewed based on Self-Study

**Includes direct access to the Board of Visitors

Effective date: July 1, 1985 (revised)

BLACK EDUCATION ASSOCIATION
OF
VIRGINIA COMMONWEALTH UNIVERSITY

APPENDIX TWO

STATUS REPORT ON

BLACK FACULTY RETENTION

A special task force of the Black Education Association (BEA) examined the history of black faculty retention at Virginia Commonwealth University (VCU) from the effective date of the *VIRGINIA PLAN FOR EQUAL OPPORTUNITY IN STATE SUPPORTED INSTITUTIONS OF HIGHER EDUCATION* through the end of the 1984-85 academic year. Data are presented to indicate the number of black faculty persons already on staff or hired since the implementation of the *Plan* and how many remained employed at the conclusion of the reporting period. Presented on a school-by-school basis, attrition rates and numbers on-staff or hired since the implementation of the plan and the numbers remaining at the conclusion of the reporting period.

Based on a review of available data and based on statements made by the Office For Civil Rights (OCR) of the U. S. Department of Education, VCU has never been in compliance with the *Plan*. In a July 5, 1985 evaluation of the implementation of the *Plan*, an OCR status report to the then Governor, Charles S. Robb, indicated that the affirmative action situation at VCU had worsened rather than improved.

> The 1984 fall on-site reviews at VPI&SU, James Madison, UVA and Old Dominion revealed that each institution implemented employment measures and hired additional black faculty for the 1984-85 academic. However, the 1984 fall on-site review at VCU revealed that the institution has failed to implement fully the employment procedures in its plan. OCR's review showed that VCU did not consistently identify recruitment sources, maintain appropriate records documenting employment decisions, or implement planned measures to retain black faculty. *In fact, VCU lost 20 percent of its black instructional and administrative staff during academic year 1984-85* (emphasis added). In January 1985 VCU notified OCR that it would take steps to ensure that proper record keeping and monitoring procedures are followed before an employment offer is made for all full-time faculty and administrative appointments. In addition, VCU upgraded the role of its employment committee to assure that VCU meets its commitments under the Plan. (U. S. Department of Education, Office For Civil Rights - *Status Report of the Office For Civil Rights Concerning Implementation of the Virginia Plan For Equal Opportunity in State Supported Institutions of Higher Education. Revised 1978; Amended 1983*: July 5, 1985).

Table 1--School-By-School Equal Employment Opportunity Activity Regarding Black Faculty

School	On-Staff or Hired Since Plan Inception	Remaining on Staff at End 84-85	Attrition Rate
Academic Affairs	8	6	25.0
Allied Health*	2	2	0.0
Arts	6	4	33.3
Athletic Department	3	3	0.0
Basic Sciences	1	1	0.0
Business	4	0	100.0
Community and Public Affairs	7	2	71.4
Dentistry	4	1	75.0
Education	14	5	35.7
Humanities And Sciences	33	14	57.6
Medicine	11	8	27.3
Nursing	2	2	0.0
Social Work	13	8	38.5
Student Affairs	8	4	50.0
University Administration	1	1	0.0

*One hired in 1951 and one 1978.

A further assessment of equal opportunity for faculty at VCU was made by reviewing persons receiving tenure and/or promotion while employed since 1969 through the conclusion of the reporting period.

Table 2--Tenure and/or Promotions of Faculty since 1969

Faculty Person	Department/School	Year
Regina Perry	Arts	1971
Murray DePillars	Arts	1977
H. Theo Young	Arts	1980
Nathaniel West	Dentistry	1982
Rutledge Dennis	Humanities and Sciences	1977
Daryl Dance	Humanities and Sciences	1978
Alvin Schexnider*	Community & Public Affairs	1978
Rizpah Welch	Education	1971
Ada Hill	Education	1979
Stanley Baker	Education	1980
Doris Bumby	Education	1982
Daisy Reed	Education	1982
Jean Harris	Medicine	1975
Vashti Richardson	Medicine	1982
Charles Christian	Medicine	1975
Grace harris	Social Work	1975
Ruby Walker	Social Work	1976
Mabel Wells	Social Work	1978
David Forbes, Jr.	Social Work	1981

---

*Appointed Associate Dean with Tenure.

A perusal of the data shown in Table 2 shows that no blacks have ever been tenured or promoted in several schools, including Business, Basic Sciences, Community and Public Affairs, and Dentistry.

APPENDIX THREE

ASSESSMENT OF PROGRESS
IN THE RECRUITMENT AND RETENTION OF BLACK
STUDENTS AT VIRGINIA COMMONWEALTH UNIVERSITY

VIRGINIA COMMONWEALTH UNIVERSITY

RELEVANT ENROLLMENT DATA

- Although the number of black Virginia high school graduates has increased since 1978, the number of black graduates at Virginia Commonwealth University has decreased (See Table 1 and Table 8).
- Why has the goal of 541 black freshmen remained the same for the past three years? There is no logic for this number, particularly since the number of Virginia high school graduates has increased (See Table 3 and Table 1).
- Virginia Commonwealth has met its goal of black first time freshmen, however, the graduate rate is much lower. There is little effort toward retention.
- Black undergraduate degeee-seeking applications declined each year from 1981 to 1985. The number of black enrolled students declined [redacted] during that period as well (See attached: Degree-Seeking Applicant and Enrolled Student Profile).

TABLE 3

NUMERICAL OBJECTIVES AND ACTUAL BLACK IN-STATE FIRST-TIME FRESHMEN AND TRANSFER STUDENTS TO UNDERGRADUATE STUDY AT VIRGINIA'S TRADITIONALLY WHITE STATE-SUPPORTED SENIOR INSTITUTIONS OF HIGHER EDUCATION DURING THE FIRST TWO YEARS UNDER THE AMENDMENTS

Institution	1983-84 Goal	1983-84 Achieved	1983-84 % of Objective Achieved	1984-85 Goal	1984-85 Achieved	1984-85 % of Objective Achieved	1985-86 Goal
CNC	156	169	108%	156	186	119%	156
CVC	8	6	75%	15	10	67%	20
GMU	118	~~187~~ [illegible]	63%	203	225	111%	300
JMU	129	184	142%	175	164	94%	225
LCC	52	72	138%	70	70	100%	90
MWC	32	23	71%	48	50	104%	65
ODU	207	312	150%	239	304	127%	276
RDU	69	59	85%	118	71	60%	174
UVA	152	164	107%	207	93	45%	269
VCU	541	554	102%	541	561	104%	541
VMI	16	12	75%	19	17	90%	22
VPI	260	219	84%	368	191	52%	490
W&M	47	25	53%	73	56	77%	102
Total	1,787	1,986	111%	2,232	1,998	90%	2,730

TABLE 1

BLACK AND WHITE

Within-State First-time Freshmen to Undergraduate Study (Fall 1978 through Fall 1984) at Virginia's State-Supported Institutions of Higher Education as a Proportion of Within-State High School Graduates

	Virginia H.S. Graduates		Within-State First-time Freshmen		Entrance Rates of First-time Freshmen	
	Black	White	Black	White	Black	White
1978	13,668	51,744	4,292	20,749	31.4	40.1
1979	13,885	52,042	4,571	21,376	32.9	41.1
1980	13,962	51,568	4,547	21,281	32.6	41.2
1981	13,740	52,330	4,384	21,916	32.0	41.9
1982	14,598	51,722	4,509	21,438	30.9	41.6
1983	14,782	49,066	4,594	21,147	31.4	43.1
1984	13,835	46,615	4,621	22,724	33.4	48.8

TABLE 8

A Comparison of Graduate Headcount Enrollment by Race at Virginia's State-Supported Four-Year Institutions of Higher Education, Fall 1978-1984

	1978 Black	1978 White	1978 Other	1978 Total	1979 Black	1979 White	1979 Other	1979 Total	1980 Black	1980 White	1980 Other	1980 Total
GMU	51	1,286	64	1,401	49	1,427	69	1,545	86	2,918	136	3,140
JMU	31	1,072	12	1,115	24	1,232	5	1,261	44	1,657	4	1,705
LC	3	64	0	67	7	68	1	76	12	59	0	71
MWC	0	0	0	0	0	0	0	0	2	51	1	54
NSU	414	129	4	547	290	112	13	415	253	120	14	387
ODU	298	2,602	250	3,150	302	2,462	611	3,375	478	3,663	230	4,371
RU	12	858	1	871	20	842	8	870	70	651	89	810
UVA	96	3,690	217	4,003	107	3,636	252	3,995	96	3,398	256	3,750
VCU	592	3,833	100	4,525	580	3,863	102	4,545	512	3,932	122	4,566
VPI&SU	109	3,877	315	4,301	128	3,854	399	4,381	150	4,042	517	4,709
VSU	482	200	23	705	467	255	26	748	472	239	26	737
CWM	36	913	15	964	39	939	39	1,017	58	1,141	53	1,252
TOTAL	2,124	18,524	1,001	21,649	2,013	18,690	1,525	22,228	2,233	21,871	1,448	25,552

	1981 Black	1981 White	1981 Other	1981 Total	1982 Black	1982 White	1982 Other	1982 Total	1983 Black	1983 White	1983 Other	1983 Total
GMU	82	2,889	188	3,159	67	2,957	163	3,187	44	1,800	116	1,960
JMU	33	1,411	6	1,450	20	1,553	10	1,583	20	670	3	693
LC	3	46	0	49	6	45	0	51	5	27	0	32
MWC	1	41	1	43	6	94	2	102	7	105	3	115
NSU	377	183	16	576	313	195	20	528	225	127	41	393
ODU	467	3,478	188	4,133	341	3,374	251	3,966	108	1,220	279	1,607
RU	15	845	3	863	12	636	2	650	19	576	13	608
UVA	111	3,295	222	3,628	95	3,442	282	3,819	100	3,320	289	3,709
VCU	512	3,765	99	4,376	452	3,699	120	4,271	234	2,547	(8)	2,773
VPI&SU	130	3,956	656	4,742	95	3,651	782	4,528	117	3,513	775	4,405
VSU	298	116	26	440	361	240	54	655	269	92	42	403
CWM	53	1,118	83	1,254	53	1,092	68	1,213	36	936	85	1,057
TOTAL	2,082	21,143	1,488	24,713	1,821	20,978	1,754	24,553	1,184	14,933	1,630	17,755

	1984 Black	1984 White	1984 Other	1984 Total	% Change Since 1978 Black	% Change Since 1978 White	% Change Since 1978 Other	% Change Since 1978 Total
GMU	51	1,937	160	2,148	0.00%	50.62%	150.00%	53.32%
JMU	15	629	8	652	-51.61%	-41.32%	-33.33%	-41.52%
LC	17	38	0	55	466.67%	-40.63%	0.00%	-17.91%
MWC	3	100	2	105	0.00%	0.00%	0.00%	0.00%
NSU	170	112	47	329	-58.94%	-13.18%	1075.00%	-39.85%
ODU	132	1,438	268	1,838	-55.70%	-44.73%	7.20%	-41.65%
RU	18	977	5	1,000	50.00%	13.87%	400.00%	14.81%
UVA	107	3,472	314	3,893	11.46%	-5.91%	44.70%	-2.75%
VCU	280	2,617	100	2,997	-52.70%	-31.72%	0.00%	-33.77%
VPI&SU	137	3,709	822	4,668	25.69%	-4.33%	160.95%	8.53%
VSU	233	64	38	335	-51.66%	-68.00%	65.22%	-52.48%
CWM	47	932	66	1,045	30.56%	2.08%	340.00%	8.40%
TOTAL	1,210	16,025	1,830	19,065	-43.03%	-13.49%	82.82%	-11.94%

NDERGRADUATE: DEGREE-SEEKING APPLICANT AND ENROLLED STUDENT PROFILE*

	1981-82		1982-83		1983-84		1984-85		1985-86	
	APP	ENR	APP	ENR	APP	ENR	APP	ENR	APP	ENR
									FALL SEMESTER ONLY	
ESIDENCY										
irginia	80%	88%	82%	89%	83%	90%	84%	91%	84%	91%
on Virginia	20%	12%	18%	11%	17%	10%	16%	9%	16%	9%
GE										
ean Age	21	22	21	22	21	22	22	22	21	22
ACE										
lack	23%	19%	22%	19%	21%	18%	18%	16%	18%	16%
hite	71%	75%	72%	76%	73%	76%	75%	79%	76%	80%
ther Minority	3%	3%	3%	3%	4%	4%	4%	4%	5%	4%
SEX										
Male	40%	40%	42%	42%	42%	42%	40%	40%	39%	40%
Female	60%	60%	58%	58%	58%	57%	60%	60%	61%	60%
CITIZENSHIP										
U.S. (includes permanent residents)	98%	99%	98%	99%	99%	99%	98%	99%	98%	99%
Non U.S. (non resident aliens)	2%	.7%[1]	2%	.4%[2]	1%	.3%[3]	2%	1%[4]	2%	1%[5]
IED SAT SCORES (first-time freshmen 2 years of age)										
luding Special Services, Conditional/Marginal Admits and Alternate Admits	955	950	960	951	961	962	953	957	966	967
Excluding Special Services & Conditional/Marginal Admits	868	905	878	909	876	923	876	916	903	917
Excluding Special Services	862	894	871	895	876	923	876	915	902	915
All Applicants	854	872	862	874	867	893	858	886	873	888

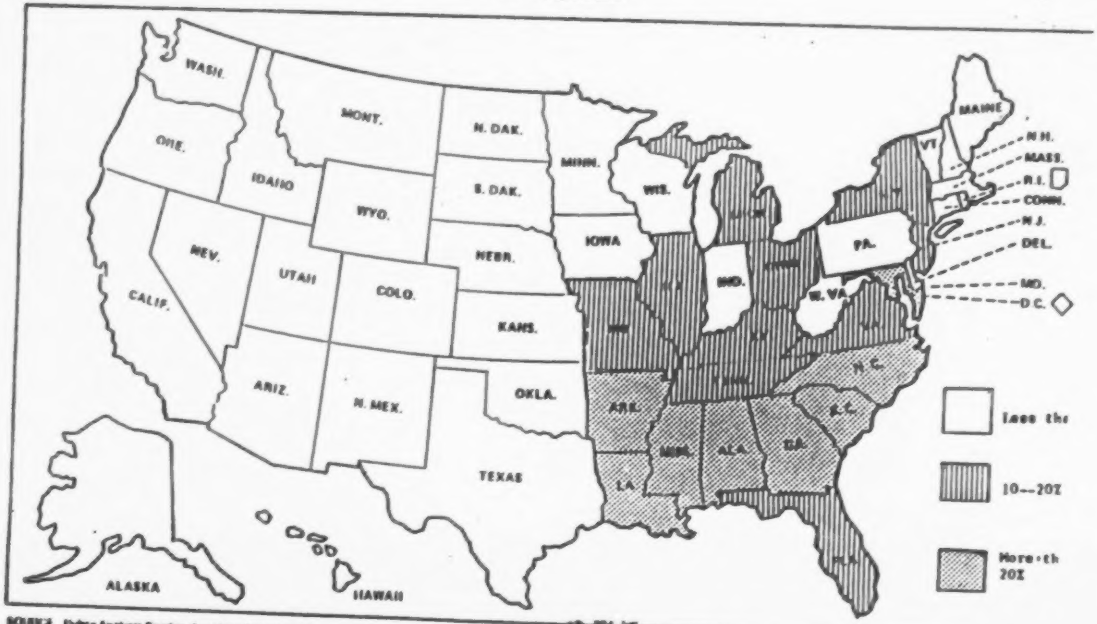
APP = Applied
ENR = Enrolled

*Data in the first three columns are for the Academic Campus only; data for 1984-85 and fall 1985 include both the Academic and MCV Campuses.

TABLE 1

RELEVANT ENROLLMENT DATA

State Comparisons of 18–24-Year-Old
Black Population


WASH.
MONT.
N. DAK.
MINN.
MAINE
ORE.
IDAHO
S. DAK.
WIS.
MICH.
VT
N.H.
MASS.
R.I.
CONN.
N.J.
DEL.
MD.
D.C.
N.Y.
WYO.
IOWA
PA.
NEV.
UTAH
COLO.
NEBR.
ILL.
IND.
OHIO
W. VA.
VA.
CALIF.
KANS.
MO.
KY.
TENN.
N.C.
ARIZ.
N. MEX.
OKLA.
ARK.
S.C.
MISS.
ALA.
GA.
TEXAS
LA.
FLA.
ALASKA
HAWAII
less than
10--20%
More than
20%

SOURCE: Policy Analysis Service, American Council on Education
Based on unpublished data from Survey of Income and
Education, National Center for Education Statistics, 1978

Numerical Objectives and Other-Race Within-State First-Time Freshman and First-Time Transfer Students Admitted to Undergraduate Study (1984-85) at Virginia's State-Supported Senior Institutions of Higher Education

Traditionally White Institutions *

Institutions	1984 Objective	1984-85 Actual Enrollment	% of Objective Achieved in 1984-85
CNC	156	186	119.2
CVC	15	10	67.0
GMU	203	225	111.0
JMU	175	164	94.0
LGC	70	70	100.0
MWC	48	50	104.2
ODU	239	304	127.2
RDU	118	71	60.2
UVA	207	93	45.0
VCU	541	561	104.0
VMI	19	17	90.0
VPI	368	191	52.0
W&M	73	56	77.0
TOTAL	2,232	1,998	90.0

Traditionally Black Institutions **

Institutions	1984 Objective	1984-85 Actual Enrollment	% of Objective Achieved in 1984-85
NSU	132	208	158.0
VSU	140	111	80.0
TOTAL	272	319	117.3

* The data pertain to black first-time enrollees at these institutions.

** The data pertain to white first-time enrollees at these institutions.

Table 5
Within-State Black First-Time Freshman Students to Undergraduate Study (Fall, 1978-1985*) at Virginia's Two-Year State-Supported Colleges

Name of College	1978	1979	1980	1981	1982**	1983	1984	1985
Blue Ridge	15	14	14	13	12	14	15	16
Central Virginia	42	50	19	23	12	14	15	16
Dabney S. Lancaster	3	3	8	1	5	6	6	7
Danville	43	41	45	42	38	43	47	50
Eastern Shore	5	3	31	1	4	5	5	5
Germanna	17	32	26	36	18	20	22	24
J. Sargeant Reynolds	250	337	258	251	313	353	384	415
John Tyler	22	54	30	35	167	188	205	222
Lord Fairfax	15	18	26	12	10	11	12	13
Mountain Empire	3	4	3	3	6	7	7	8
New River	23	38	31	34	17	19	21	23
Northern Virginia	29	57	49	48	72	81	89	96
Patrick Henry	31	61	50	43	33	37	40	44
Paul D. Camp	139	63	53	97	94	106	115	125
Piedmont Virginia	29	30	9	75	27	30	33	36
Rappahannock	62	73	77	62	53	60	65	70
Southside Virginia	86	109	100	79	84	95	103	111
Southwest Virginia	14	11	7	5	12	14	15	16
Thomas Nelson	296	310	283	297	315	355	386	417
Tidewater	556	495	342	314	329	371	404	437
Virginia Highlands	2	5	7	2	7	8	9	9
Virginia Western	39	44	82	69	57	64	70	76
Wytheville	9	6	14	19	1	1	1	1
Total-VCCS	1,730	1,878	1,564	1,561	1,686	1,902	2,069	2,237
Richard Bland	40	45	62	66	56	65	77	90
Total-Two-Year	1,770	1,923	1,626	1,627	1,742	1,967	2,145	2,327

*Actual enrollment is displayed for 1978-1981 and projected enrollment is displayed

Table 4

Within-State Black First-Time Freshman and First-Time Transfer Students to Undergraduate Study (Fall 1978-85*) at Virginia's Traditionally White, Senior State-Supported Institutions of Higher Education

	1978	1979	1980	1981	1982**	1983	1984	1985
CNC	62	88	96	106	156	156	156	156
CVC	6	6	8	8	2	8	15	20
GMU	68	62	80	90	57	118	203	300
JMU	69	30	77	41	96	129	175	225
LC	18	33	18	27	39	52	70	90
MWC	8	14	20	18	20	32	48	65
ODU	167	224	193	206	104	207	239	276
RU	39	44	51	55	34	69	118	174
UVA	105	139	142	163	113	152	207	269
VCU	404	556	550	517	541	541	541	541
VMI	8	6	11	7	14	16	19	22
VPI	110	168	172	109	103	260	368	490
W&M	28	29	21	21	28	47	73	102
TOTAL	1,092	1,407	1,455	1,448	1,467	1,787	2,232	2,730

---

* Actual enrollment is displayed for 1978 and projected enrollment is displayed for 1983-85.

** Preliminary enrollment is displayed for 1982.

NDERGRADUATE: DEGREE-SEEKING APPLICANT AND ENROLLED STUDENT PROFILE

	1981-82		1982-83		1983-84		1984-85		1985-86	
	APP	ENR	APP	ENR	APP	ENR	APP	ENR	APP FALL	ENR SEMESTER ONLY
ESIDENCY										
irginia	80%	88%	82%	89%	83%	90%	84%	91%	84%	91%
on Virginia	20%	12%	18%	11%	17%	10%	16%	9%	16%	9%
GE										
ean Age	21	22	21	22	21	22	22	22	21	22
ACE										
lack	23%	19%	22%	19%	21%	18%	18%	16%	18%	16%
hite	71%	75%	72%	76%	73%	76%	75%	79%	76%	80%
ther Minority	3%	3%	3%	3%	4%	4%	4%	4%	5%	4%
SEX										
Male	40%	40%	42%	42%	42%	42%	40%	40%	39%	40%
Female	60%	60%	58%	58%	58%	57%	60%	60%	61%	60%
CITIZENSHIP										
U.S. (includes permanent residents)	98%	99%	98%	99%	99%	99%	98%	99%	98%	99%
Non U.S. (non resident aliens)	2%	.7%[1]	2%	.4%[2]	1%	.3%[3]	2%	1%[4]	2%	1%[5]
COMBINED SAT SCORES (first-time freshmen under 22 years of age)										
Excluding Special Services, Conditional/Marginal Admits and Alternate Admits	955	950	960	951	961	962	953	957	966	967
Excluding Special Services & Conditional/Marginal Admits	868	905	878	909	876	923	876	916	903	917
Excluding Special Services	862	894	871	895	876	923	876	915	902	915
All Applicants	854	872	862	874	867	893	858	866	873	888

APP = Applied
ENR = Enrolled

*Data in the first three columns are for the Academic Campus only; data for 1984-85 and fall 1985 include both the Academic and MCV Campuses.

850 [illegible]

GRADUATE NEW ENROLLED NONDEGREE-SEEKING PROFILE*

	1981-82	1982-83	1983-84	1984-85	1985-86 FALL ONLY
NUMBER OF NEW NONDEGREE-SEEKING STUDENTS ENROLLING	487	390	587	392	323
RESIDENCY					
Virginia	35%	93%	85%	94%	92%
Non Virginia	3%	7%	13%	6%	8%
Unknown	62%				
AGE					
Mean Age	31	31	31	33	32
RACE					
Black	15%	14%	10%	11%	7%
White	82%	83%	78%	82%	87%
Other Minority	3%	3%	12%	7%	6%
SEX					
Male	38%	42%	52%	45%	50%
Female	62%	58%	48%	55%	50%
CITIZENSHIP					
U.S.	99.80%	99.20%	99.50%	99.70%	98.70%
Non U.S.	.2%	.77%	.5%	.26%	1.2%

*These figures do not include new continuing education students.

Mr. **Weiss**. Thank you very much, Dr. McLeod. Ms. Adams, welcome. We're sorry that we started while you were out of the room.

Please stand and raise your right hand? Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Ms. **Adams**. I do.

Mr. **Weiss**. Thank you. Again, we have your prepared testimony, but it is up to you as to how you would like to proceed at this point.

Ms. **Adams**. Thank you, Mr. Chairman. I would like to read this into the record.

Mr. **Weiss**. Fine.

STATEMENT OF ADELL ADAMS, CHAIRPERSON, POLITICAL ACTION COMMITTEE, SOUTH CAROLINA STATE CONFERENCE OF BRANCHES, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OFCOLORED PEOPLE

Ms. **Adams**. Mr. Chairman and members of the subcommittee, I am Adell Adams, chairman of the Political Action Committee of the South Carolina State Conference of Branches of the National Association for the Advancement of Colored People.

I appreciate the opportunity to appear before you with regard to civil rights enforcement in the Department of Education.

At the outset, Mr. Chairman, let me state for the record that unfortunately the exhibits to accompany my testimony did not arrive at the airport at the same time that I did. I was out just now. They should arrive momentarily. Hence we will submit them for the record.

Mr. **Weiss**. Fine. We will keep the record open for it. We have the same problems sometimes.

Ms. **Adams**. Thank you. In 1981, the higher education institutions in my State of South Carolina agreed to voluntary participation in the South Carolina plan for equity and equal opportunity in public colleges and universities.

The plan did not work. The failure of the desegregation plan is evident in two areas—desegregation of student enrollment at traditionally white institutions, and desegregation of faculty, administrative staff, and nonacademic personnel.

The State has made very little progress in its goal of increasing the percentage of black students enrolled in traditionally white State-supported 4-year colleges. During the life of the plan, black undergraduate student enrollment at these schools only increased from 10 percent in 1981 to 11.1 percent in 1985. Even more disturbing was the recent revelation that the number of black undergraduates decreased to 10.9 percent in the fall of 1986, and I will be submitting that report.

This bleak performance occurred while the State continued to assert that it was making significant progress. The State's record in the desegregation of faculty and staff at traditionally white State-supported institutions is even more dismal. Several of the schools were cited by the South Carolina Human Affairs Commission, in its latest report to the South Carolina General Assembly, as making little or no progress toward increasing the number of blacks among the faculty and staff ranks.

The Human Affairs Commission is the State agency charged with the responsibility of working to achieve equal opportunity in the public and the private sectors in South Carolina. It reports annually to the general assembly on the status of affirmative action plans of State agencies. The most recent report was a summary of the performance of all State agencies over the past 5 years, and I do have that material on the way.

Of the traditionally white 4-year colleges and universities listed in the report, only two were ranked in the top 36 out of 72 State agencies. For example, Citadel is No. 62 on that list. As of September 1986, the Citadel had no black faculty out of 170 persons teaching cadets, and only 2 black administrators out of more than 60.

The Citadel is the State-supported military school where five white cadets, dressed in Ku Klux Klan-like attire burst into the room of a black cadet at 1 a.m. in what amounted to an act of racial terrorism. The incident was symptomatic of the serious problems of racism and insensitivity at the school. I will submit for the record a copy of the report that the NAACP prepared on racism at the Citadel.

While the Citadel has obviously done a poor job in desegregation, it is not alone. Information compiled by the South Carolina Higher Education Commission clearly reveals very little progress in the desegregation of the public higher education institutions in our State.

If the problem is not resolved, the consequences will be severe. It will result in a reduced applicant pool of potential black professionals, and it has already resulted in these factors—reduced income potential of more black families; reduced pool of black teachers for the public school system; reduced pool of potential black college faculty; reduced pool of higher income taxpayers; reduced participation potential in various careers; and demoralization of black youngsters in junior and senior high schools.

The South Carolina NAACP was so concerned about the situation and its frightening ramifications that our executive secretary, Nelson Rivers III, went to Atlanta in April 1986 to meet with Jesse High, the acting region IV director of the Office for Civil Rights. During the meeting, the South Carolina NAACP executive secretary expressed the NAACP's disappointment with the meager progress being made in South Carolina and asked the acting regional director to direct his field staff to persons who could provide information on the sad state of affairs at many of the State's institutions.

Mr. Rivers has followed up this meeting through telephone and written communication, but he has yet to receive a reply to his written communications.

Mr. Chairman, and members of this subcommittee, the NAACP strongly recommends that this subcommittee urge the Department of Education to order the State of South Carolina to renew its desegregation plan for at least 5 more years. The renewed plan should have adequate funding and a commitment by the Commissioner of Higher Education to achieve real progress.

It is our hope that the Office for Civil Rights will be more diligent in its monitoring of future desegregation activities by our

State. If South Carolina continues with its pattern of little or no progress, then we urge that the Department of Education take the next step of asking the Department of Justice to cause litigation to be brought against the State or the particular schools that refuse to desegregate.

Mr. Chairman, and members of the subcommittee, I appreciate this opportunity to appear today and present the views of the South Carolina State Conference of Branches of the NAACP.

Mr. WEISS. Thank you both very much for very important testimony. All of the statements and attachments that you have submitted and those that you will be submitting will be entered into the record in their entireties.

[The prepared statement of Ms. Adams follows:]

STATEMENT TO THE HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
OF THE
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

PRESENTED BY:

MRS. ADELL T. ADAMS,
CHAIRPERSON, POLITICAL ACTION
COMMITTEE

S.C. CONFERENCE OF BRANCHES,
NAACP

PREPARED BY:

MR. NELSON B. RIVERS, III
EXECUTIVE SECRETARY
S.C. CONFERENCE OF BRANCHES,
NAACP

"GOOD MORNING" MR. CHAIRMAN AND MEMBERS OF THE SUB-COMMITTEE, AND THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

IN 1981, THE HIGHER EDUCATION INSTITUTIONS IN MY STATE AGREED TO VOLUNTARY PARTICIPATION IN THE SOUTH CAROLINA PLAN FOR EQUITY AND EQUAL OPPORTUNITY IN PUBLIC COLLEGES AND UNIVERSITIES. THE PLAN DID NOT WORK.

THE FAILURE OF THE DESEGREGATION PLAN IS EVIDENT IN TWO PARTICULAR AREAS.

1. DESEGREGATION OF STUDENT ENROLLMENT AT TRADITIONALLY WHITE INSTITUTIONS.
2. DESEGREGATION OF FACULTY, ADMINISTRATIVE STAFF, AND NON-ACADEMIC PERSONNEL.

THE STATE HAS MADE VERY LITTLE PROGRESS IN ITS GOAL OF INCREASING THE PERCENTAGE OF BLACK STUDENTS ENROLLED IN TRADITIONALLY WHITE STATE-SUPPORTED FOUR-YEAR COLLEGES. DURING THE LIFE OF THE PLAN BLACK UNDERGRADUATE STUDENT ENROLLMENT, AT THESE SCHOOLS, ONLY INCREASED FROM 10 PERCENT IN 1981 to 11.1 PERCENT IN 1985. EVEN MORE DISTURBING WAS THE RECENT REVELATION THAT THE NUMBER OF BLACK UNDERGRADUATES DECREASED TO 10.9 PERCENT IN THE FALL OF 1986. (SEE ATTACHED CHART)

THIS BLEAK PERFORMANCE OCCURRED WHILE THE STATE CONTINUED TO ASSERT IT WAS MAKING SIGNIFICANT PROGRESS.

THE STATE'S RECORD IN THE DESEGREGATION OF FACULTY AND STAFF AT TRADITIONALLY WHITE STATE-SUPPORTED INSTITUTIONS IS EVEN MORE DISMAL. SEVERAL OF THE SCHOOLS WERE CITED BY THE SOUTH CAROLINA HUMAN AFFAIRS COMMISSION, IN ITS LATEST REPORT TO THE SOUTH CAROLINA GENERAL ASSEMBLY, AS MAKING LITTLE OR NO PROGRESS TOWARDS INCREASING THE NUMBER OF BLACKS AMONG THEIR FACULTY AND STAFF RANKS.

THE HUMAN AFFAIRS COMMISSION IS THE STATE AGENCY CHARGED WITH RESPONSIBILITY OF WORKING TO ACHIEVE EQUAL OPPORTUNITY IN THE PUBLIC AND PRIVATE SECTOR IN SOUTH CAROLINA. IT REPORTS ANNUALLY TO THE GENERAL ASSEMBLY ON THE STATUS OF

AFFIRMATIVE ACTION PLANS OF STATE AGENCIES. THE MOST RECENT REPORT WAS A SUMMARY OF THE PERFORMANCE OF ALL STATE AGENCIES OVER THE PAST FIVE YEARS.

OF THE EIGHT TRADITIONALLY WHITE FOUR-YEAR COLLEGES AND UNIVERSITIES LISTED IN THE REPORT, ONLY TWO WERE RANKED IN TOP 36 OUT OF 72 STATE AGENCIES. FOR EXAMPLE THE CITADEL IS NUMBER 62 ON THE LIST. AS OF SEPTEMBER, 1986, THE CITADEL HAD NO BLACK FACULTY, OUT OF OVER 170, TEACHING CADETS AND ONLY TWO BLACK ADMINISTRATORS OUT OF OVER 60.

THE CITADEL IS THE STATE-SUPPORTED MILITARY SCHOOL WHERE FIVE WHITE CADETS DRESSED IN KU KLUX KLAN-LIKE ATTIRE BURST INTO THE ROOM OF A BLACK CADET, AT 1:00 A.M. IN WHAT AMOUNTED TO AN ACT OF RACIAL TERRORISM. THE INCIDENT WAS SYMPTOMATIC OF THE SERIOUS PROBLEMS OF RACISM AND INSENSITIVITY AT THE SCHOOL. I AM SUBMITTING A COPY OF THE REPORT PREPARED BY THE NAACP AS A RESPONSE TO THE RACISM AT THE INSTITUTION.

WHILE THE CITADEL HAS OBVIOUSLY DONE A VERY POOR JOB IN DESEGREGATION IT IS NOT ALONE. INFORMATION COMPILED BY THE SOUTH CAROLINA HIGHER EDUCATION COMMISSION CLEARLY REVEALS VERY LITTLE PROGRESS IN THE DESEGREGATION OF THE PUBLIC HIGHER EDUCATION INSTITUTIONS IN OUR STATE.

IF THE PROBLEM IS NOT SOLVED, THE CONSEQUENCES WILL BE SEVERE. IT WOULD RESULT IN:

A. REDUCED APPLICANT POOL OF POTENTIAL BLACK PROFESSIONALS
B. REDUCED INCOME POTENTIAL OF MORE BLACK FAMILIES
C. REDUCED POOL BLACK TEACHERS FOR PUBLIC SCHOOL SYSTEM
D. REDUCED POOL OF POTENTIAL BLACK COLLEGE FACULTY
E. REDUCED POOL OF HIGHER INCOME TAXPAYERS
F. REDUCED PARTICIPATION POTENTIAL IN VARIOUS CAREERS
G. DEMORALIZATION OF BLACK YOUNGSTERS IN JUNIOR AND SENIOR HIGH SCHOOLS

THE S.C. NAACP WAS SO CONCERNED ABOUT THE SITUATION AND ITS FRIGHTENING RAMIFICATIONS THAT OUR EXECUTIVE SECRETARY, MR. NELSON B. RIVERS, III TRAVELLED TO ATLANTA, GEORGIA IN APRIL, 1986 AND MET WITH MR. JESSE L. HIGH, ACTING REGIONAL DIRECTOR OF REGION IV OF THE OFFICE OF CIVIL RIGHTS. DURING THE MEETING, MR. RIVERS EXPRESSED OUR DISAPPOINTMENT WITH THE MEAGER PROGRESS BEING MADE IN SOUTH CAROLINA. HE ASKED MR. HIGH TO DIRECT HIS FIELD STAFF TO PERSONS WHO COULD PROVIDE INFORMATION ON THE SAD STATE OF AFFAIRS AT MANY OF THE INSTITUTIONS IN OUR STATE.

MR. RIVERS CALLED AND WROTE TO MR. HIGH ON SEVERAL OCCASIONS AFTER THE MEETING BUT HAS NEVER RECEIVED A REPLY.

WE STRONGLY RECOMMEND THAT THIS SUB-COMMITTEE URGE THE DEPARTMENT OF EDUCATION TO ORDER THE STATE OF SOUTH CAROLINA TO RENEW ITS DESEGREGATION PLAN FOR AT LEAST FIVE MORE YEARS. THE RENEWED PLAN SHOULD HAVE ADEQUATE FUNDING AND A COMMITMENT BY THE COMMISSION ON HIGHER EDUCATION TO ACHIEVE REAL PROGRESS.

IT IS OUR HOPE THAT THE OFFICE OF CIVIL RIGHTS WILL BE MORE DILIGENT IN ITS MONITORING OF FUTURE DESEGREGATION ACTIVITIES BY THE STATE. IF SOUTH CAROLINA CONTINUES WITH ITS PATTERN OF LITTLE OR NO PROGRESS THEN WE URGE THE OFFICE OF CIVIL RIGHTS TO CAUSE LITIGATION TO BE BROUGHT AGAINST THE STATE OR PARTICULAR SCHOOLS THAT REFUSE TO EFFECTIVELY DESEGREGATE.

THANK YOU.

Chart A - Percentage Level of Goal Attainment

Ranking	Agencies	%	# of Goals	# of Employees	Ranking	Agencies	%	# of Goals	# of Employees
1	Parole and Community Corrections Dept.	89.5	9	536	37	Development Board, State	[illegible]	9	[illegible]
2	Florence-Darlington Technical College	86.7	9	206		Horry-Georgetown Technical College	[illegible]	27	[illegible]
3	Alcohol and Drug Abuse Commission	81.8	9	68	38	College of Charleston	[illegible]	27	[illegible]
	State Treasurer's Office	81.8	12	56	39	Auditor's Office, State	62.5	9	[illegible]
4	Budget and Control Board	78.5	21	938		Francis Marion College	62.5	24	[illegible]
	Mental Health, Department of	78.5	21	5,510	40	John de la Howe School	62.4	12	[illegible]
5	Midlands Technical College	78.4	15	436	41	Commission for the Blind	61.0	12	[illegible]
6	Comptroller General's Office	77.4	9	94	42	Greenville Technical College	60.7	18	[illegible]
7	Department of Corrections	75.8	24	3,741	43	Denmark Technical College	60.6	12	[illegible]
	Winthrop College	75.8	30	645	44	University of South Carolina	60.4	51	[illegible]
8	Trident Technical College	75.3	21	349	45	Tax Commission	60.3	21	[illegible]
9	Mental Retardation, Department of	75.1	24	4,174	46	Coastal Council	59.3	6	[illegible]
10	Tri-County Technical College	74.9	12	194	47	Aiken Technical College	[illegible]	9	[illegible]
11	State Library	74.0	9	46	48	Archives and History Department	57.0	12	[illegible]
12	Worker's Compensation Commission	73.5	6	70	49	ABC Commission	56.8	[illegible]	[illegible]
13	Clemson University	72.9	36	3,570	50	Veterans' Affairs, Department of	56.4	6	[illegible]
14	Technical and Comprehensive Education	72.6	15	188	51	Education Department	56.0	21	[illegible]
15	Spartanburg Technical College	72.5	9	164	52	Parks, Recreation and Tourism	55.4	18	[illegible]
16	Social Services, Department of	72.4	21	4,085	53	Real Estate Commission	53.3	6	[illegible]
17	Educational Television Commission	72.2	18	336	54	Employment Security Commission	52.5	24	[illegible]
18	Insurance Commission	72.1	12	106	55	Medical University	51.9	42	[illegible]
19	Orangeburg-Calhoun Technical College	70.8	18	156		Public Service Authority	51.9	18	[illegible]
20	Attorney General's Office	70.5	9	103	56	Lander College	50.7	30	[illegible]
21	York Technical College	69.8	12	159	57	Appellate Defense, Office of	50.0	6	15
22	Law Enforcement Division, State	69.7	12	368	58	Water Resources Commission	46.4	12	[illegible]
23	Health & Human Services Finance Comm.	69.5	9	266	59	Public Service Commission	45.9	15	[illegible]
24	Worker's Compensation Fund	68.6	6	47	60	Highway Dept. (Excluding Patrol)	45.5	18	5,574
25	Land Resources Conservation Comm.	68.5	6	56	61	Financial Institutions, Board of	45.3	6	[illegible]
26	Wil Lou Gray Opportunity School	68.4	18	88	62	The Citadel	44.6	33	[illegible]
27	South Carolina State College	68.2	33	715	63	Highway Patrol	39.5	18	[illegible]
28	Health and Environmental Control	68.0	24	3,817	64	Criminal Justice Academy	38.5	18	74
29	Piedmont Technical College	67.0	15	166	65	Ports Authority	37.5	24	[illegible]
30	Youth Services Department	66.4	24	915	66	Forestry Commission	36.1	21	[illegible]
31	Labor Department	66.1	9	112	67	Wildlife and Marine Resources	35.4	21	[illegible]
32	Agriculture Department	65.8	18	195	68	Secretary of State	33.3	9	[illegible]
33	Chesterfield-Marlboro Tech. College	65.2	12	64	69	Patriots Point Development Authority	[illegible]	[illegible]	[illegible]
34	Deaf and Blind, School for the	65.0	21	398	70	Museum Commission	[illegible]	9	[illegible]
35	Sumter Technical College	64.8	12	156	71	Aeronautics Commission	[illegible]	[illegible]	[illegible]
36	Vocational Rehabilitation	64.4	15	1,015	72	Adjutant General's Office	30.4	21	[illegible]

Chart D - Comparison of Goal Attainment
Among Four-Year Colleges and Universities

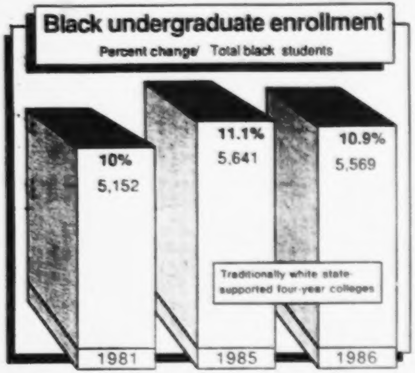
Ranking		Agencies	%	# of Goals	# of Employees
Overall	Group				
7	1	Winthrop College	75.8	30	645
13	2	Clemson University	72.9	36	3,570
27	3	S.C. State College	68.2	33	715
38	4	College of Charleston	62.8	27	596
39	5	Francis Marion College	62.5	24	321
44	6	University of South Carolina	60.4	51	4,764
55	7	Medical University	51.9	42	4,391
56	8	Lander College	50.7	30	256
62	9	The Citadel	44.8	33	544

Chart E - Comparison of Goal Attainment
Among Technical Colleges

Ranking		Agencies	%	# of Goals	# of Employees
Overall	Group				
2	1	Florence-Darlington Tech. Col	86.7	9	206
5	2	Midlands-Technical College	78.4	15	436
8	3	Trident Technical College	75.3	21	349
10	4	Tri-County Technical College	74.9	12	194
14	5	Tech. and Comprehensive Educ.	72.6	15	186
15	6	Spartanburg Technical College	72.5	9	164
19	7	Orangeburg-Calhoun Tech. Col.	70.8	18	156
21	8	York Technical College	69.8	12	159
29	9	Piedmont Technical College	67.0	15	166
33	10	Chesterfield-Marlboro Tech.	65.2	12	64
35	11	Sumter Technical College	64.8	12	156
37	12	Horry-Georgetown Tech. Col.	63.2	12	118
42	13	Greenville Technical College	60.7	18	430
43	14	Denmark Technical College	60.6	12	98
47	15	Aiken Technical College	57.6	9	119

The State **Metro / Region** B
Columbia, South Carolina • Monday, April 20, 1987

Black enrollment declines



Scott Farrand/State Graphics

Undergraduate drop is first since 1981

By SCOTT JOHNSON
and STEVE SMITH
State Staff Writers

Black undergraduate enrollment at South Carolina's colleges decreased last fall for the first time since 1981, when the state began a federally-mandated desegregation effort.

The number of black undergraduates increased at most traditionally white public institutions but dropped at Lander College in Greenwood and the University of South Carolina's Columbia and Aiken campuses, according to figures submitted by the schools to the S.C. Commission on Higher Education.

Overall, black undergraduates at traditionally white, state-supported colleges dropped to 5,569, or 10.9 percent, in fall 1986 from 5,641, or 11.1 percent, in fall 1985. The numbers had been increasing steadily under the five-year desegregation plan, which expired last summer.

The state's two-year technical colleges gained about 300 black students last fall, while private colleges and USC's two-year campuses reported declines in black enrollment.

"The public colleges and universities are holding on," said Julia Wells, CHE's desegregation plan coordinator. "It is a job for them to maintain minority enrollment and get it up even minimally, but this is the first year it has dropped (since 1981). That's not good."

Under the plan adopted in 1981, South Carolina has spent close to $20 million on programs designed to increase the number of black students and faculty at traditionally white, state-supported colleges, and to increase white enrollment at the two traditionally black institutions, S.C. State College at Orangeburg and Denmark Technical College.

White student enrollment at S.C. State decreased last year, chiefly because of a drop in the number of graduate students. During the same period, white student enrollment increased by 16 students at Denmark Tech.

Overall, the number of black students attending public and private colleges in South Carolina decreased by about 350 between fall 1985 and 1986. Black enrollment was 26,014, or about 19.4 percent of total enrollment.

The number of blacks attending graduate school at state-supported institutions also declined, although total enrollment at public and private colleges was up about 2,000 students from the previous year.

College administrators have blamed rising costs and cuts in federal financial aid for the decline in black enrollment.

Deborah Haynes, admissions director at USC-Columbia, said low-income students may perceive there is not enough money available for college and, therefore, are not applying — although most of the cuts will affect middle-income students.

At USC's Columbia campus, black undergradu-

■ See Enrollment, 3-B

Undergraduate enrollment at traditionally white state-supported four-year colleges

	1981			1985			1986		
School	Black	Total	Black	Black	Total	Black	Black	Total	Black
Clemson	243	9,918	2.5%	559	10,434	5.4%	591	10,360	5.7%
College of Char.	323	4,931	6.6%	349	4,949	7.1%	366	5,145	7.1%
Francis Marion	261	2,441	10.7%	442	3,067	14.4%	461	3,166	14.6%
Lander	267	1,826	14.6%	473	2,246	21.1%	413	2,227	18.5%
M.U.S.C.	41	694	5.9%	59	861	6.9%	66	877	7.5%
Citadel	98	2,478	4.0%	134	2,269	5.9%	156	2,304	6.8%
USC-Aiken	254	1,743	14.6%	308	2,071	14.9%	254	2,068	12.3%
USC-Coastal	187	2,374	7.9%	212	2,898	7.3%	242	3,176	7.6%
USC-Cola.	2,669	18,245	14.6%	2,194	15,069	14.5%	2,027	14,551	13.9%
USC-Spart.	237	2,607	9.1%	299	2,955	10.1%	304	2,956	10.3%
Winthrop	572	4,079	14.0%	612	4,065	15.1%	689	4,309	16.0%
TOTAL	5,152	51,333	10.0%	5,641	50,924	11.1%	5,569	51,128	10.9%

Scott Farrand/State Graphics

Enrollment

From 1-B

ate enrollment has dropped steadily from 2,669 in fall 1981 to 2,027 last fall.

The number of black undergraduate students at Lander decreased from 473 in fall 1985 to 413 last year, and from 308 to 254 at USC-Aiken during the same period.

Ms. Haynes said USC faces more competition for black students than ever before because the desegregation plan forced other public schools to recruit more heavily.

"We've had a good track record recruiting and retaining minorities, but other institutions got active and the pool of black applicants did not increase," Ms. Haynes said.

Her figures show that 83 percent of blacks at USC stayed in college between the freshman and sophomore year, compared to a national average of 79 percent.

Paula Cox, USC's affirmative action officer, said that the task facing colleges is to increase the pool of college-bound blacks.

And to help offset cuts in federal financial aid, USC will use some of the proceeds from the annual Clemson-Carolina football game for a minority scholarship program. USC's counseling center operates a program to help minority students sharpen their academic skills in order to make the tougher retention standards, Ms. Cox said.

"We are hoping that (the drop) is just a temporary situation," Ms. Cox said.

RACISM AT THE CITADEL — THE NAACP RESPONDS

This is the response by the South Carolina Conference of Branches of the NAACP to the statement issued by Major General James A. Grimsley, Jr. on February 18, 1987. The statement was the school's official reaction to reports by the State Human Affairs Commission and the Citadel's Special Board of Inquiry on the racial climate at the school.

NAACP staff members have reviewed both reports and analyzed Grimsley's statement. We were disappointed that the Grimsley statment did not contain more specifics on policies and practices to be implemented to correct the many problems cited in both reports. In fact, there are several instances where Grimsley's response did not even address findings and recommendations from the reports. The NAACP considers this a clear indication of the continuing arrogance and insensitivity at the Citadel.

The NAACP's review of the difficulties at the Citadel has led to one inescapable conclusion. The major problem at the Citadel is institutional racism. One of the best descriptions of institutional racism is described in the quote: "One of the clearest indicators of institutional racism is the exclusion of Black members of society from positions of control and leadership," taken from the book Institutional Racism in America, Knowles & Prewitt, Prentice Hall, 1969. A report by the U.S. Commission on Civil Rights stated in 1970 that racism is "Any attitude, action or institutional structure which subordinates a person or group because of their color. . . Racism is not just a matter of attitudes; actions and institutional structures can also be a form of racism." Before solutions can be found, the Citadel must acknowledge the problem of racism on its campus.

In our report, we have summarized our findings in four general categories: Recruitment and Retention of Black Students; Campus Life; Hiring and Recruiting of Black Faculty and Staff and Problems with the Administration.

We are pleased to submit the following report:

1. HIRING AND RECRUITING OF BLACK FACULTY AND STAFF

The Citadel has done a poor job in the hiring and recruiting of Black faculty and staff. The Citadel's Affirmative Action Program, as submitted to the South Carolina Higher Education Commission and the State Human Affairs Commission, is inadequate and suggests insincerity on the part of the administration to increase the amount of Blacks on the faculty and staff.

The activities described in the annual report of the Higher Education Commission's Desegregation Plan Implementation at the Citadel 1985-86 are nebulous and unimaginative. The Citadel needs to make a full-time commitment to hiring and recruiting Black faculty and staff.

The functions and activities of the Office of Personnel and Administrative Services as it relates to desegregation and affirmative action appear to be unfocused, unconcentrated, and obviously ineffective. There needs to be a staff person assigned the full-time responsibility of recruiting Black faculty and staff to improve the Citadel's dismal performance in this critical area.

President Grimsley apparently has some misconception about what affirmative action is and what it should accomplish. It is ludicrous for him to suggest, as he does in his statement, that having eight (8) white women as faculty members and "seven women (1 Black) at the non-academic level," is affirmative action as it relates to the hiring of blacks. This viewpoint also ignores the findings and recommendations of the reports by the Special Board of Inquiry and the Human Affairs Commission.

Both reports found the need to increase the presence of Blacks on campus as role models for both Black and white cadets. The current environment at the Citadel does not present a balanced view of society. Therefore, it is is crucial for the Citadel to implement affirmative measures to increase the number of Black faculty and staff.

2. Campus Life

The quality of life for Black cadets on the Citadel's campus is poor. There is a prevailing atmosphere of intolerance and overt racism in the barracks, classroom and dining facilities. The Board of Inquiry, the Human Affairs Commission, as well as interviews with Black cadets cite numerous incidents of racial intimidation, name calling, derogatory ethnic jokes and general insensitivity toward Black cadets.

The continued use and support of offensive stereotypes and racist symbols will continue to make Black cadets and their families feel uncomfortable and unwelcome. It must become clear to the Citadel's administration that the Fourth Class System is fraught with opportunities for racism, bigotry and abuse to manifest themselves. The Citadel must establish a clear and strong policy against the racist behaviors that are evident on the campus.

Black cadets have stated almost unanimously their opposition to the playing of "Dixie" and the waving of the Confederate flag. The Black cadets made it clear in both reports that the song and flag represent a time when Black people were abused, intimidated and often killed. The flag and song are constant reminders to Black cadets that they are not completely welcome at the Citadel. It makes the "long gray line" a myth.

The Citadel must understand that it is hypocritical to assert their desire for unity in the corps and yet continue to officially sanction the use of these offensive symbols.

3. Recruitment and Retention of Black Students

The Citadel's performance in the recruitment and retention of Black students is woefully inadequate. Their efforts have been inconsistent and suffer from an apparent lack of commitment by the administration. In an environment as results-oriented as the Citadel, it is difficult to imagine such a poor performance being tolerated. It is obvious that recruiting and retaining Black cadets is not a priority item.

The Citadel needs to hire a full-time, permanent minority recruiter. President Grimsley announced in his statement the addition of Lt. Eric Manson to their recruiting and admissions staff. However, Grimsley did not reveal that Lt. Manson will be at the Citadel only until the fall of this year when he will leave the staff to begin service in the U.S. Military. Prior to hiring Lt. Manson, the school employed another minority recruiter, Mr. Kenneth Harris, but he was only there for approximately six months.

These kind of activities raise serious questions about the credibility of the Citadel's proclamation to "redouble our efforts to recruit Black cadets," as stated last month by Grimsley.

The Citadel has failed for the past five years to reach its own goals for Black student recruitment. Unless there is an immediate and drastic change in the approach of the administration, we have no reason to belive there will be any significant increase in the Black student population in the foreseeable future.

The Citadel's effectiveness in the retention of Black students is equally as bleak. In its report to the Commission on Higher Education, the Citadel revealed that the retention rate for Black students in 1985 was 78% as compared to 83% for white students. Even more alarming was a suspension rate of 9% for Black cadets but only 5% for white cadets.

After reviewing the school's minority student retention activities in the above named report, there appears to be no concrete plan to increase the retention rates of Black students. The experimental orientation course referred to in the report is a poor imitation of the successful College Orientation 101 Course at the University of South Carolina. The school would do well to contact the University to provide extensive training for its personnel in the implementation of a productive College

Orientation program.

Some of the activities in the orientation program could not be viewed as serious attempts to meet the needs of Black college freshmen. A trip to see "Porgy and Bess," a one-hour session on study techniques, a one-hour library orientation and other activities are hit and miss approaches which are not aimed specifically at Black students. They are at best a disjointed effort at general student retention.

4. Problems With The Administration

The administation at the Citadel has proven to be ineffective in solving the major problem confronting the school - institutional racism. The leadership of the school mishandled the incident of racial terrorism against Keven Nesmith and has for the most part, ignored the serious problems the incident revealed that exists at the school.

The President chose to ignore many of the findings and recommendations made by both the Board of Inquiry and the Human Affairs Commission on improving race relations at the Citadel. The areas that he chose to address, he did so with incomplete or misleading information.

His assessment, that because only two (2) Black freshmen have left the school since August, then: "Black cadets who matriculate at the Citadel, find it to be a positive educational environment," ignores the facts documented in the reports and does not address dropout rates of prior years.

His response to the complaints by Black cadets that scholarship funds are awarded primarily to white cadets was incomplete and seems a bit disingenuous. Although he states the number of Black cadets receiving academic scholarships this year is 20, which represents a 35% increase in two years, he did not say how many white cadets are on academic scholarships, nor did he reveal the percentage of

Black cadets on academic scholarships. Grimsley also said that Black and white cadets receive the same per capita amount of scholarship and financial aid; he failed to complete the analysis by saying how much of the amount is academic, athletic or financial aid. This is important because of the number of Black students recruited for the various athletic programs.

Most importantly, he completely ignored the recommendation from the Human Affairs Commission that the Citadel should include Blacks on all disciplinary boards, especially the Commandant's Board and Suitability Boards, which are now all white. One of the clearest examples of institutional racism is the exclusion of Blacks from decision making bodies. Since Grimsley indicated in his statement that he commented only on items he deemed significant, then it might be inferred that he does not consider the exclusion of Black representation from these powerful boards to be important.

There can be no substantive changes at the Citadel without the leadership becoming more enlightened. The tenor and tone of Grimsley's statement, suggest some unrealistic and dangerously parochial ideas about this public institution. When he refers to not taking any actions, "which will arbitrarily diminish our heritage," it makes us wonder whose heritage he is referring. The Citadel should be reminded that it is a state and federally supported institution and is no longer a private white academy. The school must become more sensitive to the entire population of our state.

Grimsley indicated that the Citadel had begun sentivity instruction for all cadets. We wonder who is conducting the sensitivity sessions. Hopefully, the Citadel will contract this instruction with an outside agency that has a proven track record. sensitivity instruction is being conducted by the Citadel itself, then we question its effectiveness and credibility.

Recent revelations of the repeated use of the racist symbols of the Ku Klux Klan and the portrayal of negative stereotypes of Blacks and other minorities in recent Citadel yearbooks are shocking and disgusting.

The kind of sickening behavior displayed in the yearbooks could not have occurred without the tacit approval of the school's administration and faculty.

The Administration has a duty to create and foster an atmosphere of fairness, sensitivity, and respect. Clearly the present leadership at the Citadel has failed in this responsibility.

There is a wealth of evidence to suggest the dire need for a change in leadership at the Citadel. We have, therefore, called on the Board of Visitors to give serious consideration to the removal of Major General Grimsley as president of the Citadel.

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Mr. Weiss. The testimony I think you have given is really quite complete. Let me ask a broad question if I may of each of you.

Is there a general awareness within the community at large in your respective States and in the minority community at large, as well, of the failure of improvement, removal of the patterns of segregation? Dr. McLeod?

Dr. McLeod. Well, I certainly believe that there is in the city of Richmond. My own institution, which has enrolled blacks for some time, still does not have a reputation if you will for being a place of accommodation for blacks. Blacks in the community have expressed a fairly high level of discomfort, feeling uncomfortable if you will, about the institution as being a place where all blacks are welcome.

One of the things that perhaps I should have done and I would like to perhaps digress, back up a minute, and do, is offer orally into testimony, a few statements that were submitted in writing on behalf of the organization I represent, the Black Education Association.

Mr. Weiss. Good.

Dr. McLeod. The Virginia plan for equal opportunity in State-supported institutions of higher education as amended in 1983 and in the spring and fall of 1984 is scheduled to expire on June 30, 1986.

Equal opportunity in higher education in the Commonwealth of Virginia is a matter of vital concern to black instructional faculty, administrators, and academic support staff.

The Black Education Association, an organization of black faculty, administrators, and counselors, at Virginia Commonwealth University (VCU), is cited in the plan as one of the organizations at VCU that should be involved in the implementation and monitoring of the plan.

BEA established several task forces to assess progress toward desegregation in three areas—equal employment opportunity in the central administrative structure of the university, equal opportunity with respect to black faculty retention, tenure, and promotion, and affirmative action taken to facilitate recruitment and retention of black students. This document reports the findings of the task forces.

Based on the assessment of desegregation progress by BEA, it is reasonable to conclude that VCU has fallen far short of the commitments set forth in the plan. Deficiencies outlined in several areas have not been corrected over the entire life of the plan. The independent assessment effort of BEA was necessitated because official progress reports reflect considerable obfuscation. In many areas of equal opportunity, progress has slackened or reversed the progress altogether.

While the laudable goal of equal opportunity benefits all students, there are legions of tireless opponents to equal opportunity and affirmative action. If progress has been much less than desirable under the plan, it would be considerably less if the plan were allowed to expire. Equal opportunity is now eroding, and with the expiration of the plan, desegregation gains made by blacks in higher education would face the prospect of systematic destruction.

Previous events and the current poor performance in matters of equal opportunity at VCU provide support for a compelling argument that support for equal educational opportunity would naturally die without continued outside support. Recent trends and current practices in the arena of equal opportunity suggest that another, quote, counter-reconstruction would be imminent without crucial enforcement measures for holding the line against opponents of equal opportunity in higher education.

BEA strongly urges the Office for Civil Rights to extend the plan for another 5 years from July 1, 1986, through June 30, 1991.

From an extensive review of progress toward equal opportunity and with respect to administration, faculty, and students, no evidence emerges that either equal opportunity or affirmative action is flourishing at VCU. A serious dichotomy exists between public pronouncements of VCU's efforts to implement the plan and the actual status of equal opportunity for blacks. While BEA views the plan as viable to equal opportunity goals, candid facts suggest that little has changed since the plan's implementation.

Monitoring and evaluation of the plan have also been carried out poorly by the university and its officials or persons designated to report on the progress of the plan. The task force findings present a somewhat provocative and unpleasant picture of the status of blacks at VCU. The actual equal opportunity outcomes at VCU have not been amenable to the techniques and devices used to assess those outcomes.

The model used to assess black student retention did not disaggregate attrition by school, by department, nor by curricula advisor. Further, the model did not undertake sufficient examination of the flow of students through various stages of their student careers.

Consequently, there is no indication of factors of personal exchange between faculty and student which may contribute to the disproportionate attrition of black students. Attrition reports focus primarily on factors such as extended length of time to graduate and termination of student careers due to economic reasons, thus realizing the self-fulfilling prophecy that loss of a source of funding aborts student careers.

Failure to disaggregate administrative workers in support operations from administrators in hierarchial structure of the central university administration obfuscates the fact that blacks are totally excluded from the universitywide policymaking apparatus. Blacks have served and are currently serving as chancellors, presidents, and vice presidents at major universities throughout the United States. However, at VCU, no black has ever served in the central administration.

From the standpoint of policy formulation and enforcement of equal opportunity regulations, this stark fact suggests a weak commitment to equal opportunity and affirmative action goals.

A fuller argument, considering recent events that eliminated a viable black candidate from consideration for the post of provost and vice president for academic affairs, and systematically preventing blacks from attaining other posts, would suggest a conscious policy of affirmative discrimination.

In any event, the fact that no black has ever occupied a post in the central administration can be construed as prima facie evidence that VCU has been less than wholehearted in providing equal employment opportunity for blacks or in promoting affirmative action goals in some of the most sensitive posts in the university. The university has yet to make a clear statement about equal opportunity, equal employment opportunity, in its administrative ranks.

In terms of faculty retention, VCU's efforts have been far less than enthusiastic. A critical shortage of black faculty exists in various schools and departments across the university, despite the fact that these schools and departments reflect significant black student enrollment.

It is ironic and frustrating to black faculty that VCU has not found it a priority to employ even one black professor in the School of Business, and that a white professor acts as head of Afro-American studies while eminently qualified blacks have been rejected for the same position because they have been tenured elsewhere, although precedent exists for bringing tenured associate professors.

The actual picture of faculty retention has been so poor that OCR itself cited VCU for its high turnover of black faculty.

Further, out of 226 full professors, only 7 are black. It is noted that four of these were promoted since a discrimination case was instituted in Federal court by another black seeking promotion to the rank of full professor. Two of these four were brought in as full professors and two were promoted internally.

At the conclusion of the reporting period, there were only three black full professors. No blacks have been granted tenure since the 1981-1982 academic year. This factor certainly helps to erode opportunities for mentoring relationships so vital to the development of junior black faculty. From this summary of facts pertaining to black faculty, one could hardly conclude that a favorable climate of equal opportunity exists for black faculty at VCU.

The thoughts, observations, and materials appended to this memorandum graphically portray poignant disclosures of the extremely poor state of equal opportunity at VCU. One of the most critical factors emerging from this report is the flux of impressions and cogent images among black faculty that VCU has a less than lukewarm commitment to equal opportunity for blacks in its academic community. Black perceptions of a less than adequate effort to promote fairness in equal opportunity are supplemented by straightforward statistical evidence and nonspurious interpretations of data regarding desegregation progress.

As it relates to the Office for Civil Rights, our organization did seek to have an opportunity to be involved in onsite review last spring, having made several overtures to the administration and to address certain areas of discriminatory practices.

One of the things that concerned us as an organization was the process that OCR used on onsite visits seems to be a rather heavy reliance upon the university actually to indentify people to be interviewed by OCR. It is almost tantamount to the fox watching the chicken coop. In many situations, there weren't very many blacks who, as a result of their positions, had been selected even to be interviewed by OCR during onsite. In many cases where blacks were involved in the interview process, they were so greatly outnumbered by white colleagues that many really felt a bit uncomfortable about being too candid about this situation.

As a result, the BEA and our organization really demanded that OCR grant us an opportunity to meet with them privately or as an organization of black faculty and administrators.

This the Office for Civil Rights did grant, and we had an opportunity to meet with the investigator assigned to the onsite.

What was particularly disturbing for us was the fact that we outlined to him a number of instances, a number of situations and certain statistical facts, which certainly belie any notion of equal or affirmative action, and many of the black faculty were very, very emotional in their display of concern for this situation. The real fear, and that is something that really hasn't been talked about very much, but many black faculty at these institutions are quite fearful; they don't feel there is a great deal of protection for them at the institution.

I know simply in trying to get others to come with me here, many black faculty and staff were forthright in expression of concern for retribution and retaliation for coming before a body such as this in appearance and the offering of testimony. So that's a real fear among black faculty at traditionally white institutions, and that's another reason why we think it is awfully important that there be some continued Federal presence in monitoring overview of the desegregation effort. In any event, despite all of the facts that were presented to the investigator during the onsite at VCU last spring, despite the data which I offered for your perusal here, just a few months after the onsite, the Office for Civil Rights sent the president of the university a letter commending him for the great job being done in the way of affirmative action at the institution. This really suggests to us that perhaps the Office for Civil Rights was more concerned, you know, with how well an institution is able to write a report and the extent to which they can get fair or poor statistics to read favorably. So the concerns about black faculty and feelings of black students, who also met with them and expressed similar concern, seemed to be almost overlooked entirely, and we simply felt that there may even have been a predisposition, you know, against even entertaining the adverse criticisms or concerns about the affirmative action effort.

Mr. **Weiss**. Thank you. Ms. Adams, what is your sense of community awareness and concern and perception as to what has happened in South Carolina, both in the community at large and elsewhere?

Ms. **Adams**. There is most certainly awareness of the problem in the community, the community at large. During the last several years, there has been action in the general assembly to try to get the general assembly to integrate the boards of predominantly white colleges. That has met with minimal results, much to the dissatisfaction of the black legislators and the black community.

At the present time, most boards will have probably one person, and there are some who insist that they have other regulations such as being alumnus of the college that will keep blacks from being added to the board in the numbers that should be there.

Probably the most outstanding problem is the same one that has been stated, that is, the one where there is no faculty. The faculty, there are no full professorships. There are no blacks in it, in the high administrative positions at most of the colleges, and that's a continuing problem, and the answers that we received from the institutions are that they can't find qualified people, and this is—the NAACP was involved initially when the plans were being put together, but during the monitoring process, we have had no meaningful role. The attitude has been go away, don't bother us, so we have not been involved in the monitoring.

On occasion we have addressed several of the institutions when problems arrived, but we aren't welcomed at all. The attitude is that everything is fine and that the plans that have been submitted are being adhered to.

Mr. **Weiss**. Well, again, I thank both of you for very, very important testimony and appreciate your coming some distance, and I know at inconvenience, and staying with us throughout the day. Thank you very much.

The subcommittee now stands adjourned subject to the call of the Chair.

[Whereupon, at 3:39 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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